Popular Sovereignty in Europe

A realist inquiry into the principles and genealogy of popular sovereignty and its abiding relevance for the EU's legitimacy

Submitted by **Jan Pieter Beetz BSc, BA, MSc, MA** to the University of Exeter as a thesis for the degree of **Doctor of Philosophy** in **Politics**, February 2015.

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Abstract

This thesis proposes a realist analysis of the contemporary concept of popular sovereignty in its ability to make sense of the EU's legitimacy. Drawing upon Bernard Williams' political thought, a conception of legitimacy should make sense of hierarchical rule as a desirable civic order from within its own historical circumstances at the normative level. In addition, it should offer realistic guidance to political agents, meaning that its political fictions must therefore acquire a certain degree of practical resonance in order to act as heuristic tools. The modern concept of popular sovereignty sets appropriate criteria of legitimacy based upon the bonds created between citizens. Through a genealogical inquiry, I reconstruct conceptions of popular sovereignty which underpin defences of the EU's output, democratic, and identitarian legitimacy from canonical arguments. These justifications of the state consider the people as beneficiaries of security *and* economic prosperity, as a self-governing *demos*, and as a cultural nation, respectively. I propose a realist vindication of this multi-faceted conception of popular sovereignty at the normative level, because these different conceptions complement one another in making sense of the sovereign state's legitimacy. The thesis then discusses how the political fictions of the people could simultaneously make sense within the European polity. In short, the citizens of Europe's polities have become part of the normative systems which create judicial-economic, civic-democratic, and socio-cultural relationships within the territorial borders of the European states. In addition, the centralisation of decision-making power and implementation resources has given plausibility to the political fiction of sovereignty. European integration has, however, resulted in a reconfiguration of these normative systems and restructuring of power into a two-tier political order. In this novel context, a realist vindication of the contemporary conception of popular sovereignty is no longer possible. The thesis concludes by suggesting that a *demoicratic* reconceptualisation of popular sovereignty offers a constructive way to make sense of the EU's legitimacy.

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If this is your land, where are your stories?
Tsimshian elder's response to U.S. government officials[1]

Those who lose Dreaming are lost.
Australian Aboriginal proverb

[1] Quoted in (Chamberlin 2003: 1).

Chapter 1: A Realist Inquiry into Popular Sovereignty in Europe

> The European Union notoriously lacks a single European "people" able to close the "democratic deficit" between citizens and institutions.
>
> Margaret Canovan, *The People*, 354

> A genealogy is a narrative that tries to explain a cultural phenomenon by describing a way in which it came about, or could have come about, or might be imagined to have come about … After a certain point, or rather, various different points, we must turn to real genealogy - to cultural contingencies and to history.
>
> Bernard Williams, *Truth & Truthfulness*, 20; 39

I - Introduction

The EU's alleged democratic deficit remains a topical issue in political, public, and academic debates. This thesis proposes a realist analysis of the contemporary concept of popular sovereignty in its ability to make sense of the EU's legitimacy. Drawing upon Bernard Williams' political thought, a conception of legitimacy should make sense of hierarchical rule as a desirable civic order from within its own historical circumstances at the normative level. In addition, it should offer realistic guidance to political agents, meaning that its political fictions must therefore acquire a certain degree of practical resonance in order to act as heuristic tools. The modern concept of popular sovereignty sets appropriate criteria of legitimacy based upon the bonds created between citizens. Through a genealogical inquiry, I reconstruct conceptions of popular sovereignty which underpin defences of the EU's output, democratic, and identitarian legitimacy from canonical arguments. These justifications of the state consider the people as beneficiaries of security *and* economic prosperity, as a self-governing *demos*, and as a cultural nation, respectively. I propose a realist vindication of this multi-faceted

conception of popular sovereignty at the normative level, because these different conceptions complement one another in making sense of the sovereign state's legitimacy. The thesis then discusses how the political fictions of the people could simultaneously make sense within the European polity. In short, the citizens of Europe's polities have become part of the normative systems which create judicial-economic, civic-democratic, and socio-cultural relationships within the territorial borders of the European states. In addition, the centralisation of decision-making power and implementation resources has given plausibility to the political fiction of sovereignty. European integration has, however, resulted in a reconfiguration of these normative systems and restructuring of power into a two-tier political order. In this novel context, a realist vindication of the contemporary conception of popular sovereignty is no longer possible. The thesis concludes by suggesting that a *demoicratic* reconceptualisation of popular sovereignty offers a constructive way to make sense of the EU's legitimacy.

This introductory chapter unfolds as follows: I commence (section II) by arguing that the debate on the EU's democratic deficit is fruitfully understood as one on the politically relevant relationship between EU citizens. From this perspective, popular sovereignty remains the central concept through which to make sense of the EU's legitimacy. The next section (section III) introduces Bernard Williams' political thought in the context of the (re)emergence of realism in normative political theory. Contemporary realists emphasise, firstly, the autonomy of politics as a distinct sphere of human endeavour and, secondly, the importance of actual politics for theory development. Williams connects these tenets in a distinct way in his realist theory of legitimacy in which political authority should make sense within its own historical circumstances. The subsequent section (section IV) explicates the argument and its contribution to the literature. This thesis appraises the normative commitment to popular sovereignty in making sense of the EU's legitimacy through a realist lens. I propose that a realist inquiry informed by Williams' thought offers a contribution to the existing debate(s). His perspective offers, firstly, a sophisticated understanding of the contemporary conception of popular sovereignty which governs debates on the EU's democratic deficit. Secondly, this historicist approach clarifies its normative use in making sense

of the sovereign state, and why this conception no longer remains vindicated in making sense of legitimacy within contemporary Europe. Finally, I propose that a *demoicratic* conception of popular sovereignty could make sense of democratic legitimacy of the EU. After clarifying this contribution (section V), I introduce my genealogical method and the rationale behind its application. In short, I will inquire into the conceptualisation and institutionalisation of popular sovereignty in the European polity, before and after European integration, in the search for a realist appraisal of this political norm. The final section (section VI) illustrates how the overall argument unfolds in the rest of the thesis.

II - The EU 'democratic deficit' as a question of popular sovereignty

The twentieth century project of European integration could for a long time rely upon so-called permissive consensus. This most recent attempt at European integration stands out from its predecessors in virtue of its peaceful and voluntary nature. Europe's sovereign states have progressively integrated into the Union through the acceptance of supranational laws and bureaucratic procedures (Zielonka 2008: 139). The peaceful emergence of a set of political institutions designed to pursue common objectives has been described as an unprecedented political achievement (Moravcsik 1998: 501). Lindberg and Scheingold (1970) coined the term permissive consensus to describe popular support for this rather elitist project. This support was based upon the prospect of beneficial outputs, such as peace and prosperity, in the aftermath of the Second World War. This consensus, however, seems to have deteriorated since the early 1990s.[1] As Donald Puchala observes, "supranational decisions penetrate national societies and affect Europeans' lives every day" (1999: 329). In this context, by raising fundamental questions about the future of European integration, the Maastricht treaty forced the democratic legitimacy of the European polity and its regime on the political, public, and academic agenda (Bellamy and Castiglione 2003: 7-8; Dobson 2006: 511). This treaty was arguably a 'precipitating factor' for broader intellectual openness to critical evaluations of norms at the end of the Cold War (Dobson 2006: 513; see also Lacroix and Nicolaïdis 2010a: 10). Either

way, permissive consensus lost its legitimating force. The social sciences' large register of tested legitimation strategies and taxonomies have been drawn upon to suggest solutions in theory (e.g. Beetham and Lord 1998; Føllesdal 2006) and in practice (e.g. Eriksen and Fossum 2004; Middelaar 2009). These attempts to make sense of the EU's legitimacy have, however, been to little avail and the debate persists. The current lack of popular acceptance of the EU's authority has been described as a constraining dissensus (Hooghe and Marks 2009) and even as a crisis of democratic legitimacy (Marks 2012: 17).

In academia, the theorem of the democratic deficit gave rise to an increasing number of normative reflections on European integration (Friese and Wagner 2002: 342): the so-called normative turn in EU studies (Bellamy and Castiglione 2003: 8).[2] The broadly shared analysis behind the EU's democratic deficit is that European institutions gained a degree of formal and informal autonomous decision-making powers without meeting the necessary criteria of legitimacy (e.g. Beetham and Lord 1998; Lord 2011). As we will see, however, theorists disagree about the criteria to be met. The normative debate on this real world problem reflects the lack of a shared evaluative framework for making sense of the EU's legitimacy. A precondition for a stable political order is broad consensus between rulers and ruled on the appropriate criteria of legitimacy for a political order. One challenge facing the EU is the creation of a coherent understanding of the institutional realities of European governance (e.g. Schmidt 2004; Schmitter 2000; Zielonka 2006). This debate continues to grapple with Wallace's famous analysis of the European Community as 'less than a federation, more than a regime' (Wallace 1983). Furthermore, in addition to its institutional complexity (Friese and Wagner 2002: 342; Zielonka 2007: 190), many uncertainties and disagreements continue to exist about the desirable institutional form of democratic politics in Europe (Eriksen and Fossum 2004: 435). This observation places the current reality in a temporal perspective in which legitimacy would materialise once an institutional aim has been achieved (see however Sternberg 2013; Weiler 2012). European political integration is arguably best understood as a transformation into a novel democratic polity (e.g. Bohman 2004; Friese and Wagner 2002: 353). The normative question

remains as to how to organize democratic rule within this elusive, but nonetheless emerging European polity (Lavdas and Chryssochoou 2011: 45-47).

Appropriate criteria of legitimacy for the Union have been sought in both classic statist models and novel *sui generis* models. Andrew Moravcsik, for example, argues in favour of the re-establishment of an intergovernmental regime (Moravcsik 2002), whilst others argue that the EU should become a federal democratic state (e.g. Bickerton 2011; Morgan 2005a). The former rejects the desirability of any move toward a post-national democratic order. The federalists, by contrast, interpret the current state of affairs as a phase toward the creation of a European federal state. They believe that a federal state is a desirable *telos* for the European project. This disagreement is primarily about the rightful place of sovereignty within the European polity (e.g. Bellamy and Castiglione 1997; Bowman 2006; Pélabay, Lacroix et al. 2010). These approaches have, however, been deemed too statist and lacking sensitivity to the peculiarities of the emerging European polity (e.g. Friese and Wagner 2002; MacCormick 1997). A second strand of EU scholars argues that the *sui generis* character of the emerging European polity has to be taken seriously since the European polity has transformed from its statist form toward a unique type of polity (e.g. Bohman 2005; Cheneval and Schimmelfennig 2013; Dahl 1989; Nicolaïdis 2013). These theorists' analyses focus on the social substrate of existing relations between citizens of the European polity (Friese and Wagner 2002: 343). The assumption is that the relationships between European citizens are not akin to the set of social, economic, and cultural relations within Europe's national polities (Bellamy 2013: 502). This analysis does not mean that democratic legitimacy is unattainable. Some argue that EU-citizens share an interest in the outcomes of European governance. Output legitimacy is therefore an appropriate criterion of legitimacy due to citizens' interdependence upon one another for attaining economic prosperity (e.g. Majone 1996; Scharpf 1999). Others, by contrast, argue that democratic institutions fit in with EU citizens' common commitment to democratic values, a European regime should, consequently, be democratic. Unlike Moravcsik and other intergovernmentalists, they argue that these democratic institutions do not require a European nation (e.g.

Bohman 2004; Habermas 2001). These theorists thus offer alternative political theories on appropriate criteria of legitimacy for the EU. The examples illustrate how contextual approaches disagree about relevant relationships between EU citizens, resulting in proposals which make sense of the EU's legitimacy through different criteria.

The concept of popular sovereignty grounds these theorisations of the legitimacy of the EU -- implicitly or explicitly -- because relationships between citizens inform the appropriate criteria of legitimacy. These relationships transform the denizens within Europe's polity into a 'people', which constitutes the normative underpinning of a legitimate democratic European polity. In this context, popular sovereignty describes a normative logic of legitimacy in which an account of the people is essential in delineating appropriate criteria for evaluating the legitimacy of a political order. The appropriate criteria of legitimacy, therefore, can include outcomes, procedures, or other norms. An opposing group of theorists reject the need for an account of the people to make sense of the EU's legitimacy. The people is not a conceptual necessity for legitimate democratic rule (e.g. Balibar 2004a; Bohman 2004: 320-321). The majority of statist solutions and *sui generis* theories, however, do rely upon communalities, or lack thereof, between citizens to make sense of the EU's legitimacy. Richard Bellamy argues, for instance, that the scope of democratically legitimate rule is limited by the existing relationships between citizens which define them as a people (Bellamy 2013; see also White 2011), a claim which echoes broader political and public debates (Sternberg 2013). As this section has shown however, the appropriate conceptualisation of the people remains contested in Europe's novel political landscape. I will argue that the broader commitment to statist conceptions of popular sovereignty contributes to the continued contestation of the EU's legitimacy. Bernard Williams' philosophy frames my realist inquiry into and appraisal of popular sovereignty in contemporary Europe, I will therefore introduce his political thought next.

III - Bernard Williams and Realism in Normative Political Theory

Bernard Williams' political thought has been an important catalyst for the current (re)emergence of realism in normative political philosophy. These realists have been characterised as 'at first glance a ragtag band' (Galston 2010: 385) consisting of a variety of thinkers, such as '(low) liberals, left-Nietzscheans, Machiavellians, and agnostic left-wing Schmittians' (North 2010: 381).[3] Two tenets distinguish these political realists from other philosopher and theorists: (i) the autonomy of 'the political' as a space of conflict and power, and (ii) the importance of non-ideal circumstances of (real) politics for political theory (Baderin 2014; Mantena 2012: 455).[4] These two central tenets of political realism clarify the assumptions and distinctiveness of Williams' realist political thought. This brief introduction positions this thesis' philosophical approach within the realist movement in normative political theory. Williams' realist theory of legitimacy connects the two realist tenets in a distinct manner. In contrast to other normative approaches, Williams' political realism offers a particularly fruitful approach for appraising our conceptions of popular sovereignty, in virtue of its function in making sense of the EU's legitimacy. I will contrast political realism to other approaches to clarify Williams' distinctiveness.

The realist autonomy claim holds that political theory should treat politics as an autonomous sphere of human endeavour. This approach has historically been construed in opposition to both consequentialist moralist theories (driven by assessments of certain institutions' ability to instantiate moral values) and neo-Kantian theories (driven by moral constraints on political action, often expressed in the form of a right to justification). Realists associate so-called political moralism, or 'high liberalism', with the work of the early John Rawls, Ronald Dworkin, and Jürgen Habermas (e.g. Galston 2010; North 2010; Stears 2007). Their critique is not strictly about its normative desirability, but rather that these philosophies are not about the human endeavour of politics. To illustrate the logic of this argument, Michael Oakeshott argued that political theorization should draw out the conceptual framework of a particular *thea* – empirical phenomenon – without reducing it beyond recognition. The *thea* under investigation sets limits to the act of theorization (Oakeshott 2004). On the realist account, 'the political' should be

the *thea* under investigation in *political* theory. Realists claim that political moralists reduce politics to questions about morality or law rather than focusing on real practice of politics (Galston 2010: 386; Philp 2008: 394). A realist inquiry, by contrast, starts with an interpretive analysis of the *thea* of politics in order to set boundaries to their normative projects.

This brings us to the two most fundamental features of the political, as defined by realists. According to them, the defining features of the so-called 'circumstances of politics' (e.g. Elkin 2001: 1941; Williams 2005: 77-78) are coercion and conflict. Inevitable disagreement is a fact in every polity. Coercive structures constitute a 'functional response' to deal with it (Stears 2007: 545). These coercive structures prevent civil war thereby creating a stable political order able to solve, or more likely alleviate, internal conflicts, and possibly even achieve common projects. This realist interpretation of 'the political' excludes two states of affairs as apolitical. On the one hand, this precludes civil war and anarchy, but also peaceful social relations, because they lack the coercive structures characteristic of the *thea* of politics. On the other hand, the suppression of all conflict through coercion within the polity also constitutes an apolitical state of affairs. In such a state of raw domination,[5] rulers use coercion in violent and manipulative ways to enforce and even 'legitimate' their power. Rulers and ruled no longer form a *political* order. Instead, this situation has digressed into a civil war pitting rulers against ruled; politics becomes the problem it should alleviate. This dismissal of domination as apolitical alludes to an inherent normativity within the realist understanding of 'the political'.[6] The acceptable organisation of coercive power in political circumstances of unavoidable conflict becomes a central topic in normative realist theory; the question of legitimacy (Rossi and Sleat 2014: 692-694).

The second tenet of political realism is the claim that many theories have become too detached from real politics. This so-called detachment critique, in a nutshell, holds that Anglo-Saxon political philosophy often digresses into utopian daydreaming without any relevance to real politics (e.g. Hall Forthcoming: 2-4). This critique features prominently in the *corollary* debate on ideal and non-ideal theory (e.g. Erman and Möller 2013; Mills 2005; Philp 2008; Robeyns 2008; Schmidtz 2011; Simmons 2010; Stemplowska

2008; Valentini 2009; Ypi 2010). In classic Rawlsian terms, non-ideal theory should address the question of how to achieve ideal principles of justice without the assumption of full-compliance. The use of idealisations, false assumptions, and a lack of real world relevance have also been deemed useful to distinguish ideal theories from non-ideal ones (e.g. Stemplowska 2008; Swift 2008; Valentini 2009). These differentiations are informed by several distinct, but interrelated criticisms of ideal theory (see Schmidtz 2011). Many contributors agree that there is a place for both. Some argue that ideal principles are a prerequisite for thinking about normative non-ideal theory (e.g. Stemplowska 2008; Valentini 2009; Ypi 2010).[7] Political realists, however, are sceptical whether political theory can derive norms from outside the real practice of politics.

Broadly accepted facts about human experience and historical context are constitutive for realist theorisations of politics. Realist political theory adheres to 'the canons of logic' and 'rest[s] on [the] laws of nature' (Galston 2010: 403). Classic examples of realist assumptions about human psychology include Machiavelli's argument about fear being a more stable assumption for rule than love and Madison's assumption of self-interest in his institutional design of the modern commercial republic. Human psychology affects political practices, these pragmatic considerations should therefore be taken seriously in *political* theory (Williams 2005: 72-73). The realists are not necessarily advocating the *status quo,* because political beliefs and practices change. The imaginative act of a ruler can undo previously accepted conventions (Geuss 2008), which implies that radical breaks are both possible and unpredictable (Wright 2007: 32).[8] Friese and Wagner (2002) observe that many theorists in the debate on the EU's legitimacy do not explicitly address the relationship between 'social context' and 'political form'. Those ascribing to the no-*demos* thesis, for example, have been prone to emphasise constraints (Friese and Wagner 2002: 344). The political form, however, is part of the institutional context. The constitutional order, for instance, can shape its citizens (e.g. Elkin 2001). Taking seriously the impact of new circumstances should prevent political realism becoming a deterministic defence of the status quo. Matt Sleat rejects mere *status quo* apologists (Sleat 2014) and even invokes, together with Enzo Rossi, the Althusserian adagium, "Be Realistic. Demand

the impossible" (Rossi and Sleat 2014). Despite being unable to predict the future, social scientific reflections can draw attention to particularly resilient features of social reality (Robeyns 2008: 350; Wright 2007: 32).[9] Realists argue that political theories should remain sensitive to the specific circumstances in which political concepts have to govern political behaviour (Sangiovanni 2008). In principle, the concepts should be able to guide political practices (Hall Forthcoming). Therefore, as Zofia Stemplowska argues, a non-ideal theory should address "the circumstances that we are currently facing, or are likely to face in the not too distant future" (Stemplowska 2008: 342). In a similar vein, a realist interpretation of possible change avoids social determinism *and* retains the normative potential of political realism (Valentini 2009: 340-342). It is important to recognise, however, that this fact-sensitivity to the circumstances of (real) politics is an important, yet oft misunderstood tenet in Williams' political thought.

Contemporary realism in normative political theory is 'fact-sensitive' for a specific reason; political realists argue that normative theory should draw its norms from the practice of politics. Political realists consequently engage in *normative* political theory from a practice-sensitive perspective.[10] They argue that other normative concerns are equally if not more relevant to political theory than morality (Jubb and Rossi Forthcoming - 2015). In a Machiavellian vein, some argue that morality is not applicable to political theory (Rossi and Sleat 2014: 691). Either way, the relevant normative considerations should be drawn from actual political practices. A philosophical question presents itself: why draw norms from political practice? A deeper implicit ontological consideration informs Bernard Williams' realist commitments. Williams argued that this is necessary because our identities and our normative commitments are products of history (Williams 2000: 490-491). An individual's conceptual understanding of the world is not a static given. Rather norms evolve over time, making the elaboration of a final answer impossible (Schmidtz 2011: 783-790). Philosophy, therefore, has to commence *in medius rebus* from a particular historical understanding of normative concepts (see also Horton 1992). In the case of political theory, the meaning of normative concepts should be drawn from political practices. To borrow Sangiovanni's use of concept and conception (Sangiovanni 2008; 2013), theorists can posit an

abstracted account of a concept, such as justice. This concept relies upon the particular conceptions used in practices. The concept's conceptual structure captures 'family resemblances' between actual historical instantiations: conceptions (see also Coicaud 2002). This ontological understanding of normative commitments informs Williams' argument that real political practices should be taken seriously in normative political theory (Williams 2000). Edward Hall persuasively argues that Williams' realist thought resists categorisation into the ideal/non-ideal and fact-sensitive/fact-insensitive distinctions (Hall Forthcoming). Williams engages in ideal theory, but relevant norms are drawn from political practices within their historical circumstances. Yet these norms, in turn guide, should be able to guide political practice or they would make no sense to human beings as political conceptions.

It is from this realist political philosophy that Bernard Williams developed his theory of legitimacy. I shall briefly introduce Williams' theory of legitimacy to be able to better clarify my argument and its contribution to the literature. In this influential theory (e.g. Bavister-Gould 2011; Hall 2015; Sleat 2010), Williams argues that modern politics faces the challenge of creating a civic order within a situation of conflict (Williams 2005: 1-17). Coercive hierarchical structures are necessary to create stability and avoid degeneration into civil war. These structures, however, can also become a threat to the civil order if the rulers use their power to dominate the ruled. In effect, the solution becomes part of the problem. Williams makes the point that rulers should offer legitimation stories to the disenfranchised to justify their authority (Williams 2005: 3-9).[11] If sufficient number of citizens accepts these stories then the regime is legitimate. Legitimation stories, however, are more than mere justificatory devices on Williams' account. He argues that citizens require legitimation stories to 'make sense' of their political reality. These hermeneutical tools turn the political order into a structure intelligible by citizens, thereby enabling them to evaluate its legitimacy. Williams' account of legitimation stories implies that our conceptions of legitimacy emerge out of particular historical circumstances. These circumstances shape concepts into particular conceptions, because human beings have to contextualise these 'thin universal concepts' to make sense of their specific political life-world. One consequence is that legitimation stories make sense 'to us around here'.

'Us around here' implies that political concepts are particular to a set of individuals rather than the whole of humanity (Williams 2000: 483-484). This constituency does not have to be nationally or territorially bound, but rather it shares a cultural background in the anthropological sense. On Williams' account of realist theory, political theorists should reconstruct political *conceptions* from the legitimation stories used when making sense of a particular order's legitimacy (Hall 2014; Forthcoming). From this account of legitimacy, Williams proposes a genealogical method to appraise the normative function of our political conceptions (e.g. Williams 2004). In line with Edward Hall (Hall Forthcoming), I argue that this realist approach sets two criteria for the appraisal of political concepts; a normative vindication in virtue of offering a desirable answer to the first political question of establishing order, and second an appraisal of its plausibility in guiding political practise. This realist method, which I shall present later on, remains unexplored in the debate on the EU's legitimacy. It can however, so I hope my thesis will convincingly show, offer a valuable contribution to the normative theoretical debates on the EU's democratic deficit. The method enables a reconstruction of the dominant conceptions of popular sovereignty and allows their appraisal as functional tools for making sense of contemporary Europe's political order.

IV - The argument and its contribution to the literature

The central claim of the thesis is that a continued normative commitment to popular sovereignty, when making sense of the EU's legitimacy, cannot remain vindicated from a realist perspective. I argue that the continued normative commitment to contemporary conceptions of popular sovereignty undermines attempts to make sense of the democratic legitimacy of Europe's contemporary political order(s). This political theoretical inquiry concludes with a proposal for a *demoicratic* conception of popular sovereignty. These conclusions derive from an extensive genealogical enterprise. I commence with a reconstruction of our contemporary conceptions of popular sovereignty from canonical arguments on the sovereign state's legitimacy. These technocratic, democratic, and identitarian conceptions of popular sovereignty

clearly resonate with the three dominant criteria in the debate on the EU's legitimacy – output, democracy and identity respectively. Each of the three conceptions relies on a distinct understanding of 'the people' with its implicit normative principle and conceptual border. The people are posited as beneficiaries of security and prosperity, as *demos*, and as nation. After this conceptual reconstruction of popular sovereignty, I firstly argue that the conceptions of popular sovereignty can be vindicated at the normative level and, secondly, that they could function as heuristic tools in Europe's statist pre-integration polity. This multi-faceted conception of popular sovereignty is vindicated due to its ability to make sense of the sovereign state's legitimacy within modernity's enlarged polities. And further despite countries' distinct trajectories, Europe's territorial states offered boundaries for normative systems to institutionalise groups of people as beneficiaries, *demos*, and nation within their borders. The fictions of the people and sovereignty gained practical resonance within these circumstances. In the aftermath of the Second World War, however, the modern project of integration has significantly transformed the circumstances within which popular sovereignty has to function to make sense of the political legitimacy. Focussing on contemporary Europe, the boundaries between the normative systems which institutionalised national peoples as beneficiaries and *demoi* opened up in parallel with the creation of second tier of authoritative decision-making: the EU. Yet national public spheres still ground democratic will-formation processes and national identities in national polities. A multi-faceted conception of popular sovereignty is, so I conclude, ill-suited to making sense of contemporary political practices of rule. These conceptions are unable to make sense of Europe's two-tier political order in circumstances of deep diversity. National peoples remain primarily bound by nationally organized systems, yet are nonetheless drawn into transnational relations as collectives. On the basis of this interpretation of the institutional bonds of collectivity, I suggest that a *demoicratic* conception of popular sovereignty could provide a fruitful avenue through which to overcome Europe's democratic deficit. While this reconceptualisation constitutes a significant departure from the contemporary conceptual structure of popular sovereignty, it could realistically guide citizens in making sense of the EU's legitimacy.

The guiding normative question is whether our contemporary conception of popular sovereignty can remain vindicated in the context of European integration. My thesis offers, through a genealogical method, a realist assessment of contemporary conceptions of popular sovereignty in their capacity to make sense of the contemporary European political order. This method reflects Williams' historicist underpinnings in normative political theory. To clarify, I shall expand upon the aforementioned historical nature of our normative conceptions. As alluded to above, Williams argues that autonomous historical processes shape individuals' understanding of the social world. Humans find themselves socialised in a specific context with their own specific meanings (e.g. Bevir 1996; Williams 2005; Wright 2010: 22). This cultural-historical formation of meanings creates what Edward Hall has called the 'realist constraint' on political theory (Hall Forthcoming).[12] Political theory has to be sensitive to historical circumstances when reconstructing *and* appraising conceptual structures (Williams 2005: 75-78).[13] Edward Hall clarifies that this realist constraint is misconstrued as mere fact-sensitivity. Instead, historical sensitivity reflects intellectual seriousness because concepts gain their determinate meaning in real (historical) practices. Therefore, unlike Dworkin, Williams does not propose to replace normative theory with history (Hall Forthcoming: 7-8). A conception, however, is not vindicated simply because it was useful in the past. This is a conservative tendency found among certain strands of cultural conventionalists (Sangiovanni 2008: 144-146). Instead, the lesson to take from Wittgenstein's anti-foundationalism, as Williams argued, is that parts of our social world can be critically condemned from positions within the cultural background (Williams 2005: 29-39).[14] Realism thus maintains its critical potential. The fact that normative concepts are the product of contingent historical processes vindicates human beings as authorities to reject or accept norms upon reflection (e.g. Williams 2000; Williams 2004: 40). William's political thought informs this thesis' normative theoretical question; namely, whether the contemporary conception of popular sovereignty remains vindicated in contemporary Europe.

This historicist account of our normative concepts informs a genealogical enterprise which might, to some, come across as rather

extensive for a thesis addressing a contemporary political challenge. To justify and clarify why this thesis reflects upon the ideas of popular sovereignty in relation to the formation of the modern state in four of its eight chapters (chapters 3 through 6), I turn to Williams' realist criteria for the appraisal of our normative commitments. The objective of philosophy, according to Williams, has been summarised as follows: "we must reflect on where our commitments come from, how (if at all) we can make sense of them, and whether or not we should continue to use them in our first-order disagreements" (Hall 2014: 567-568).[15] This thesis' genealogical enterprise aims firstly to reconstruct the conceptions of popular sovereignty used to make sense of the state's legitimacy because, as Williams argues, a political concept is a 'contingent historical deposit' of 'various conceptions and understandings' (Williams 2005: 75).[16] My aim is to reconstruct those conceptions relevant to the current debate on the EU's legitimacy; I therefore take the current debate as the point of departure. Leaving aside Europe's diversity for now, normative commitments to our current conception of popular sovereignty have been shaped by the past. In the case of the popular sovereignty, they were used to make sense of the state, hence I turn to the concept's statist past first. I hope that readers will bear with me on this genealogical enterprise. The more sophisticated understanding of how we make sense of the state's legitimacy in relation to popular sovereignty is essential to appreciating the *EU's* democratic deficit. The conceptual reconstruction focuses on 'the people' as the normative heart of popular sovereignty, a move vital to the subsequent institutional assessment of why these distinct statist conceptions of popular sovereignty contribute to the EU's democratic deficit. This assessment reflects on the institutional political realities in which conceptions of popular sovereignty emerged in the European polity. The central claim is that three conceptions of popular sovereignty could make sense in Europe's statist polity, when relationships between populations were contained within the territorial borders of Europe's sovereign states. European integration, however, has significantly transformed the institutional landscape. These conceptions of popular sovereignty can no longer remain vindicated in their current constellation. The extensive genealogical enterprise is vital to laying the groundwork required to systematically reach this conclusion.

This thesis, however, also transcends Williams' philosophical agenda because it also suggests a conception of popular sovereignty for novel European legitimation stories. The negative conclusion that contemporary statist conceptions of popular sovereignty cannot make sense of democratic legitimacy within the European polity is, arguably, somewhat unsatisfactory. More importantly, institutional analysis of the Union opens up some avenues for critical reflection. In line with Williams' contemporary followers (e.g. Sangiovanni 2013), I propose my own conception of popular sovereignty based upon a realist interpretation of Europe's institutional bonds of collectivity. Drawing upon my conceptual framework (chapter 2), I will use the final chapter to suggest a significant reconceptualisation of popular sovereignty, which once more makes sense of legitimacy within Europe's polity. I propose that my institutional analysis (chapter 7) resonates strongly with the literature on a European *demoicracy*; the normative position that the Union should be understood as novel transnational or multilateral democratic order in which multiple peoples legitimate the overarching democratic regime (e.g. Bellamy 2013; Cheneval and Schimmelfennig 2013; Nicolaïdis 2013). Using Andrea Sangiovanni's practice-dependent approach to concept development, I will offer a realist account of the institutional relationships, or 'bonds of collectivity', existing within contemporary Europe. This interpretive analysis informs a *demoicratic* conception of popular sovereignty able to make sense of the legitimacy of Europe's two-tier political order within circumstances of deep diversity. Finally, I will sketch how this conception could make sense of the legitimacy of the EU-institutions, developing my position through both constructive and critical arguments. Most importantly, the outcome of this analysis draws hopeful conclusions regarding a prospective legitimate democratic European polity. This thesis primarily offers a realist analysis of the role of popular sovereignty in the contemporary debate on the EU's democratic deficit. It nonetheless attempts to offer a constructive contribution to this debate by proposing a *demoicratic* reconceptualization of popular sovereignty.

The thesis contributes to the political theoretical literature on the EU's democratic deficit, which has accurately been described as 'crowded territory' (Kohler-Koch and Rittberger 2007).[17] It can fruitfully be located within this

body in relation to its three distinct characteristics: its realist method, its focus on popular sovereignty, and its proposal for *demoicratic* popular sovereignty. The realist method is often misunderstood due to the many connotations carried by the term realism. This method is distinct from non-ideal approaches, because these approaches tend to start from an analysis of the institutional context to then formulate an appropriate normative principle to design political institutions. Williams' realist method is, in the first instance, not about finding ideas that could align with institutional realities. It instead analyses the normative conception used in practices to make sense of the political order, because legitimacy cannot emerge if conception cannot guide practices. As a result, the normative question concerning political concepts, such as popular sovereignty, is whether our conceptions could act as heuristic devices which make sense of the legitimacy of a specific political order within its own historical circumstances. In line with this aim, this thesis primarily analyses the current conception(s) of normative concepts so as to appraise its functioning (or lack thereof) as a desirable heuristic device for making sense of the EU's legitimacy. These other closely related non-ideal approaches are equally valid on their terms, but they are distinct from this realist approach, as are its outcomes.

Aligning myself more with the non-ideal theorists in EU studies and neo-realists in normative political theory, I propose a new conception of popular sovereignty suited to Europe's novel institutional context. To my knowledge, self-aware, Williams-inspired realists are almost completely absent from the literature on the EU. For my proposal, I draw upon the notable exception to this rule: Andrea Sangiovanni. He uses his practice-dependent approach to concept development (2008) to offer a conception of solidarity suited to the EU (2013). Sangiovanni argues that politics should take precedence over morality, because a political order constitutes a precondition for legal, aesthetic, economic, and moral orders, to name a few. This logic informs his institutionalist approach to the analysis of relevant norms able to govern practices which are imminent in a regime's design (Sangiovanni 2008). He uses this approach to develop an appropriate conception of solidarity for the Union.[18] In a similar vein, Williams theorises legitimacy for a non-state political regime of human rights (Williams 2005: 62-74). Whilst

drawing upon Sangiovanni, especially in the final chapter, my object of analysis is not solidarity (as a particular conception of justice), but popular sovereignty as a species of concept through which to make sense of political legitimacy (other than human rights). Of course, a particular conception of popular sovereignty might generate popular demands for justice, thus justice and legitimacy are not completely separate in theorising political norms. Still, my realist inquiry focuses on the normatively relevant relationships between European citizens in making sense of the EU's legitimacy rather than theorising any duties of justice (or charity). Furthermore, Sangiovanni's practice-based approach focuses on the regime's constitutional documents in order to interpret appropriate conceptualisation of solidarity from the point and purpose of the (present) regime (Sangiovanni 2008; 2013). My inquiry reconstructs the contemporary conceptions of popular sovereignty from arguments predating European integration. This genealogical rather than purely institutional mode of theorising distinguishes my approach from Sangiovanni's, if not necessarily in form at least in focus. That being said, Sangiovanni remains a source of inspiration, especially in the final chapter in which I explicitly use his method. The thesis uses this underexplored theoretical method to navigate an underappreciated topic: contemporary conceptions of *popular* sovereignty.

The focus on popular sovereignty results in a substantive contribution to the normative theoretical literature on the EU's democratic deficit. This topic has informed a wide array of reflections. The question of the appropriate institutional design has been particularly salient since the early 1990s. Many scholars of the Union have proposed (implicitly and explicitly) institutional models to guide the European integration process (e.g. Friese and Wagner 2002; Horeth 1999). A democratic federal superstate, technocratic regulatory state, and intergovernmental regime are the prominent proposals for the Union associated with federalist, functionalist, liberal intergovernmental social science explanations of the integration process respectively (Schimmelfennig 2004: 78). The focus on popular sovereignty shifts attention away from the institutions closely associated with the debates on the concept of sovereignty (e.g. Aalbers 2004; Avbelj 2014; Ham 2001). Some convincingly argue that European integration has been the official death sentence of sovereignty

(Bellamy and Castiglione 1997: 421). Yet one has to consider that *de jure* popular sovereignty is distinct from the more descriptive concept of *de facto* state sovereignty. Focussing on popular sovereignty, this thesis also contributes to the debates on constituent power in international political theory (Patberg 2013). In these debates the people rather than the institutionalisation of (sovereign) power forms the point of departure for philosophical reflections on legitimacy. From this perspective, the form of coercive structures should follow from an account of the authority of the people. In line with this 'trailblazing debate' (Patberg 2013: 224), I inquire into popular sovereignty within one particular context: the European polity.

Commitment to the normative payoff of a *demoicratic* conception of popular sovereignty locates this thesis in the literature on the EU as a *demoicracy.* This ideal has recently gained salience in the normative literature on the EU (e.g. Bellamy and Castiglione 2013; Besson 2006; Bohman 2005; Cheneval and Schimmelfennig 2013; Müller 2011; Nicolaïdis 2004; Weiler 1999). The argument supporting it broadly conforms to a two-step structure (Beetz 2015: 38-40). The first step is that the European polity consists of European peoples rather than a unified European people with an overarching democratic regime. Unlike federalists and nationalists, this situation is evaluated as normatively desirable. Transnational spill-over effects, such as environmental pollution, require democratic transnational responses to avoid one *demos* effectively dominating another (e.g. Cheneval and Schimmelfennig 2013: 340; Nicolaïdis 2013: 358-360). A *demoicratic* European regime is more desirable than the recreation of a sovereign state because it mitigates some of the negative effects of fully sovereign peoples. *Demoicrats* draw attention to, for instance, the exclusionary nature of peoplehood (Cheneval and Schimmelfennig 2013). The second step in the argumentative structure is the advocacy of *demoicratic* institutions, procedures, and values to legitimate the Union. The EU is not a state, but it requires more than indirect intergovernmental democratic legitimacy (Cheneval and Schimmelfennig 2013: 338-340; Nicolaïdis 2013). Francis Cheneval and Frank Schimmelfennig delineate appropriate criteria of political legitimacy for the Union through a Rawlsian constructivist methodology (Cheneval and Schimmelfennig 2013), whilst other *demoicrats* turn to the

republican value of non-domination to sketch appropriate criteria for a legitimate European order (e.g. Bellamy 2013; Nicolaïdis 2013). At the core of these *demoicratic* arguments lies the analysis that a political theory of EU legitimacy should take seriously the continued existence of national European peoples.

This literature knows a similar divide to the broader political theoretical literature on the EU between model-application and *sui generis* non-ideal approaches. To avoid frontloading this thesis, I will present the general tendencies in the literature at this stage to align myself with non-ideal theorists. A more detailed treatment follows in chapter 8. My approach distinguishes itself from *demoicratic* philosophers who assume particular Rawlsian democratic procedural values as the only relevant norms, such as Francis Cheneval (2011) or Antoinette Scherz (2013), or similar deliberative democratic standards to offer a normative justification for a *demoicratic* Union, including James Bohman (2004) and Samantha Besson (2006). These accounts take a firm principle-first approach to theorising the EU's legitimacy. Instead, my realist approach and conclusion aligns more closely with non-ideal contributions to this debate. Theories, such as Kalypso Nicolaïdis' immanent account of European *demoicracy* (e.g. Nicolaïdis 2003; Nicolaïdis 2013; Nicolaïdis and Young 2014; Pélabay, Lacroix et al. 2010), Richard Bellamy and Dario Castiglione's neo-republican argument (e.g. Bellamy 2013; Bellamy and Castiglione 1997; 2003; 2013), and more institutional accounts including Jürgen Neyer's supranational deliberation (Neyer 2012; 2014), cumulate in proposals relying on more realistic accounts of Europe's peoples, as more than mere statespeoples or purely democratic entities, *pace* Cheneval. The EU's democratic legitimacy has to rely upon a transnationalist political theory which acknowledges distinct national democracies (Bellamy and Castiglione 2013; Nicolaïdis and Young 2014). My contribution to this *demoicratic* body of knowledge lies not only in my argument that the opening up of borders has not merely resulted in a democratic imperative to govern interdependencies, but also that the European governance regime has resulted in institutional transnational ties between national peoples. These institutionalized bonds offer a firm realist justification for a European *demoicratic* political order which, so I suggest, could rely upon a legitimation

stories grounded in a *demoicratic* conception of popular sovereignty. The thesis thus contributes a realist justification *and* an alternative conception of popular sovereignty to the existing literature on the EU as a *demoicracy.*

V - A realist genealogical inquiry into popular sovereignty

A genealogical method was chosen to reconstruct contemporary conceptions of popular sovereignty, in anticipation of their appraisal as heuristic tools in Europe's contemporary institutional landscape.[19] Broadly speaking, genealogies are histories of the present. The genealogical method has become a prominent methodology in the human sciences.[20] In political philosophy, David Hume's account of the artificial virtue of justice is an early predecessor (Hoy 1986; Williams 2004: 21), though the method is more commonly associated with Friedrich Nietzsche (2007 [1887]) and Michel Foucault (1984).[21] A distinction can be drawn between historical and imagined genealogies (Williams 2004: 20-21).[22] Historians, such as Quentin Skinner (1998) and Mark Bevir (2006), undertake historical genealogies which balance the literal interpretive tendencies of hermeneutics with the sceptical ones of deconstructivism (Dienstag 2011: 44). The aim of these genealogies tends to be critical or 'subversive' (Shklar 1972), such as Stefan Elbe's genealogy of the idea of Europe (2001). They reveal radical contingency thereby denaturalizing concepts taken for granted nowadays (Williams 2004: 20), for instance sovereignty (Bartels 1995).[23] Imagined genealogies, on the other hand, are philosophical treaties. Bernard Williams uses this method (2004: 20-22) to vindicate normative commitment to particular conceptions, or to condemn them (Hall 2014). On his account, a philosophical genealogy should provide a 'potential explanation', which is an explanation that is true if the assumptions were correct (Williams 2004: 31).[24] Potential explanations offer plausible functional reasons for holding onto a political commitment (Williams 2004: 31). But despite the fictional starting point, a philosophical project exclusively relying on thought experiments can wander off into the realm of 'science fiction' (Williams 2004: 39). Williams therefore argues that a philosophical genealogy has to turn to historical and cultural observations to secure its realism (2004: 39). For example, one cannot rationally predict the

creation of a system of writing, however once it has occurred then we should theorise its impact on our conception of truth (Williams 2004). A philosophical genealogy must thus turn to human practices to remain sensitive to the facts which shape normative concepts (2004: 39). In this regard, as said above, Hall argues that the inclusion of historical arguments and circumstances is a mark of 'intellectual seriousness' on behalf of the political realist (Hall Forthcoming). A philosophical genealogy should reflect on whether our original commitments to concepts continue to perform a desirable role within present circumstances, thus being vindicated, or should instead be condemned. A philosophical genealogy should cumulate in value-judgements on our normative commitments.

The genealogical tradition is also known for its sensitivity to power broadly construed. Friedrich Nietzsche and Michel Foucault have been particularly sensitive to the power of ideas. These thinkers propose critical reflections on ideas taken for granted. Nietzsche's famous concept of 'slave' or 'herd morality' suggests that Christianity offers the weak with the power to discipline the strong (Nietzsche 2007 [1887]). Foucault's writings were more explicitly political in this regard. With regards to legitimacy, Foucault describes *governmentality*, a notion which captures a self-disciplining *ethos* among modern citizens in the West (Foucault 2003 [1975-1976]). These theorists illustrate that normalised conceptual relations influence individuals' behaviour; ideas therefore have political power. More specifically, Foucault's analysis points toward the social construction of political power, which makes reflecting on political concepts particularly important. Friedrich Nietzsche's legacy explicitly influences Williams' philosophy (2000). Yet, as I will address in more detail later on (chapter 2), Williams argued that legitimation stories play an anthropological role making the political order intelligible as *a structure*. On his account, the creation of social and political power through semantic relationships is not necessarily undesirable. A commitment to particular conceptions can be deemed desirable due to their contribution to civic order, for instance. Williams' interpretation of this Nietzschean legacy consequently enables a vindicatory account of normative concepts rather than a mere problematisation thereof. Genealogical reflections on political concepts can

thus result in either condemnation or vindication of particular conceptions in the present.

The inclusion of actual historical circumstances, especially political institutions, is vital for a realist genealogy. The reason lies in the importance of Williams' 'realist constraint'. Conceptions should make sense in particular circumstances. Context matters when appraising a political conception's continued relevance in making sense of the existing political order. Legitimation stories do not make sense of all politics everywhere, but they should make sense in *particular* institutional circumstances. The classic conception of privacy, for example, loses its former function in the realm of politics with the digital revolution, such as when criminals film their own crimes. Privacy does not disappear, but our understanding of it should change to deal with new contingent facts (Hall Forthcoming: 7-8). In a similar vein, legitimation stories of political regimes have to make sense of the actual institutional framework. To take an obvious example, legitimation stories prefaced on an absolute right or wrong, such as most fascist ideologies, make little sense of the democratic political institutions of the Union (hopefully). Political institutions matter in the vindication of a normative commitment to political concepts. This is the first reason for the inclusion of institutional circumstances in a realist genealogy.

The second reason is that conceptions should be able to guide individuals' behaviour within particular circumstances. Political institutions shape conceptions of legitimacy because human beings use these normative concepts to navigate through the political world. If they do not reject imperfect concepts, therefore, they will adapt them to fit the circumstances. As Charles Taylor argues:

> [F]or political actors, understanding a theory is being able to put it into practice in their world. They understand it through the practices that put it into effect. These have to make sense to them, the kind of sense the theory prescribes (Taylor 2004: 115).

As an analogy, Immanuel Kant argued that theories depend upon schematized incorporation in practices to become historical realities (Taylor

2004: 115-116). The original meaning of democracy, for instance, was transformed into representative democracy to suit modern enlarged polities (e.g. Dunn 2005). The practical process of making sense is only sustainable if the legitimation story 'fits' the political institutions. Too large a gap between semantic relationships and institutional reality results in an inability to guide individuals. In this context, the concept of popular sovereignty relies upon fictions to make complex and at times inconsistent practices intelligible. The place of political fictions in the legitimation practice remains underexplored in Williams' work, which is arguably due to his concern with truth in Western politics. Two core aspects of popular sovereignty -- the people and sovereignty -- have been deemed political fictions which rely on citizens' acceptance whilst defying demonstration and/or overcoming a degree of dissonance. In this context, the willing suspension of disbelief by the ruled is another functional demand for conceptions to realistically guide political practices. Too abstract or otherwise ill-suited conceptions fail to function as heuristic devices for (real) politics. The conceptions have to find practical resonance to remain vindicated as heuristic tools. My appraisal of our conceptions of popular sovereignty therefore takes into account the changes within the political institutions in contemporary Europe.

My genealogical enterprise combines a conceptual reconstruction of the contemporary conceptions of popular sovereignty with an analysis of the institutional circumstances in which they should function as sense-making devices. In combination with more practical research considerations, I have chosen to turn to canonical arguments for the conceptual reconstruction. The primary reason is that, as Williams argued, the object of analysis for the philosopher are the reasons used to make sense of our semantic relationship to the world (Williams 2000: 483). The use of well-known arguments is a proven method to reconstruct the meanings of political concepts on which there exist first-order disagreements (e.g. Horton 1992; Williams 2005: 78-79). The method is not only proven, but empirical evidence further justifies this choice since individuals apply paradigmatic arguments through analogies to other cases (Kratochwil 2006: 305-306). As Charles Taylor further explains:

> How do we understand society? We have a theory. We read Rousseau, we read Locke, that's very often part of the understanding, and societies differ in the degree to which there is theoretical foundation. Modern Western societies are much more theory-entrenched than others … (Bohmann and Montero 2014: 4).

On this account, these canonical arguments continue to shape our understanding of ourselves. For example, Thomas Hobbes' *Leviathan* might have been irrelevant in his time; as Williams argues, theories require some time to influence political practice (Williams 2005: 57-58). Furthermore, Hobbes' intentions might have diverged from its reception. Yet the idea of individuals escaping a brutal state of nature through consent to a common sovereign for their mutual benefit remains an influential argument in Western political thought. Francis Cheneval, for instance, invokes Hobbes' security argument to justify a multilateral political order in an age of globalisation (Cheneval 2007). The Hobbesian example might trigger concerns about the possibility of anachronism in the genealogy. The danger of anachronism derives from contemporary conceptions being a product of the reinterpretation and reuse of possibly outdated principles. It thus results from the human practice of sense-making rather than the choices of the genealogist. In the sense-making process, an argument might be stripped of its original metaphysical properties, which are essential to the historical reconstruction of a theorist's political thought. Locke's contract theory, for instance, is embedded in a Christian worldview, which resonates with his reference to mankind rather than a particular people *per se* (e.g. Dunn 1968; Stanton 2011). Yet, Locke's arguments are still invoked in contemporary debates on capitalism (Somers 2008; Spies-Butcher, Paton et al. 2012b) and even European rule (Lord 2011). As Raymond Geuss argues, most contemporary liberals have engaged in similar practices in their appropriation of Kant's political thought (Geuss 2002). From this perspective, a genealogical reconstruction might, at certain points, come across as anachronistic, however this characteristic is part of the contemporary conception rather than the result of its historical reconstruction. Moreover, upon critical reflection, the genealogist might condemn certain conceptions in their contemporary context

due to their unsustainable dissonance between it and political practice. Still, this thesis takes seriously the historical resonance of the conceptions used to make sense of the political world.

By now it should hopefully become apparent that this genealogical research is a project in political theory and not an intellectual history (see also Castiglione 1993). The first part of the genealogy reconstructs the conceptions of popular sovereignty that inform the EU's legitimacy debate from canonical arguments which legitimate the state upon the same criteria. The thesis is not primarily concerned with reconstructing authorial intentions - weak or strong - (Bevir 2002), entire theories of past philosophers, or even concepts in or out of their historical context.[25] The aim is to reconstruct a contemporary conceptions from their intellectual tradition, which rejects any essentialist understanding of these concepts (Bevir 1999; Geuss 2002: 325-326). Such reconstructions might include theorists that, in a historical light, might be too distinct. To illustrate, together with Hobbes, Locke's property argument has become part of a tradition legitimating state rule in virtue of outputs. Of course, Hobbes did not construe subjects as citizens nor did he share Locke's metaphysical Christianity *per se*. Versions of these canonical arguments nonetheless continue to be invoked in debates on the legitimacy of political orders (Simmons 1999). These arguments thus continue to resonate with contemporary conceptions of popular sovereignty. The danger of anachronism is a concern for intellectual historians rather than for this presentist genealogy of contemporary meaning. My genealogical enterprise uses arguments from a more narrow historical period - European state formation - compared to other genealogists, who for instance trace the idea of Europe back to Plato (Elbe 2003). Still, the use of secondary sources should guard against implausible reconstructions of canonical arguments. Raymond Geuss reflects on anachronism in conceptual reconstructions, concluding that the genealogy's success should be appraised in virtue of achieving its overall aims (Geuss 2002: 322-326). Hopefully, the final argument convincingly achieves its aim: to develop a more sophisticated understanding of our contemporary conceptions of popular sovereignty.

The conceptual chapters focus on reconstructing the principle bonds and boundary of the people in conceptions of popular sovereignty. The three

dominant criteria in the contemporary EU legitimacy debate -- output, democratic and identitarian legitimacy -- rely upon distinct conceptions of popular sovereignty, I shall argue. The justificatory logic shall guide the selection of arguments on the state's legitimacy. From canonical arguments, I reconstruct distinct accounts of the people underlying these three contemporary conceptions of popular sovereignty. The canonical arguments exemplify attempts to justify these criteria as appropriate for the legitimacy of the modern sovereign state. In the process, they shape rather abstract criteria of legitimacy, as others have pointed out (e.g. Coicaud 2002; Hall Forthcoming; Williams 2004). As will become apparent, these arguments posit a bond between the ruled which prescribes a particular criterion of legitimacy as appropriate for the state. The genealogy focuses on the reconstruction of these conceptual bonds of collectivity. The reconstruction will also focus on the conceptual boundary between popular sovereigns that is the posited border between different peoples. The reason to focus on this fiction is that it remain the normative underpinnings of contemporary conceptions of popular sovereignty (Bickerton 2011; White 2010; 2011). These conceptions of popular sovereignty are subsequently placed in their institutional circumstances in order to appraise how they could make sense of the state as the authoritative modern political order.

In chapters six and seven, I turn to the institutional analysis in which these conceptions attempt to make sense of the legitimacy of political order within Europe's modern polity before integration and in the present day. Chapter six starts with the normative appraisal of popular sovereignty in its ability to make sense in modern circumstances. This analysis focuses on three key features of modern enlarged state polities: complexity, value pluralism, and closure. The three paradigmatic conceptions of popular sovereignty can complement one another in making sense of these features. I hopefully offer a convincing argument as to why individuals should become willing to suspend their disbelief and buy into stories of popular sovereignty. This realist vindication of the statist, multi-faceted conception of popular sovereignty sets the point of departure for a systematic appraisal of its heuristic function in making sense of the state's legitimacy. The institutional

analysis assesses whether this conception could function in making sense of legitimacy in statist Europe, and then, present day Europe. Focussing on the essential political fictions of people and sovereignty, I argue that the statist conceptions made sense of a particular set of institutional circumstances, which have now been transformed through European integration. I use several historiographies to reconstruct Europe's institutional landscape (Axtmann 2004; Bellamy 2004; Bobbitt 2002; Goldmann 2001; Hertz 1957: 475-485; Tilly 1975). Stefano Bartolini's *Restructuring Europe* has been a particularly fruitful source of historical evidence because his analysis focuses on the institutionalisation of relationships between individuals in European polities and the changes due to modern integration processes (Bartolini 2005). Unlike Bartolini's primarily empirical analysis however, I evaluate these institutional circumstances with an eye on the practical resonance of political fictions underpinning the multi-faceted conception of popular sovereignty, which is necessary for it to act as a heuristic tool for political agents. My analysis shows that the three distinct conceptions of popular sovereignty made plausible sense of legitimacy before European integration, however this process cumulated in significant changes in normative systems of peoplehood, and structures of power. The conceptions have lost the ability to fulfil their heuristic function in the *contemporary* European landscape. This institutional analysis thus reconstructs the important institutional features of this landscape before integration (chapter 6) and then offers an analysis of the current European landscape (chapter 7). As said, this institutional part of the analysis focuses on two central concepts present in each conception of popular sovereignty: the people and sovereignty.

The first notion can be understood to have two interrelated, yet analytically distinct, practical dimensions.[26] On the one hand, 'the people' is grounded in individuals' sincere beliefs, which are informed by legitimation stories. A normative self-awareness of an individual's communality with others in the polity is the product, to some extent, of these stories (Tilly 2005). A group might not exist before such a representative act (Glencross 2011: 350). In stories of popular sovereignty, the collective identity acts as the source of criteria of legitimacy for any political regime. An essential point is to recognize that the self-awareness of, for instance, economic interests can shape

individuals' shared identity as with any self-clarifying nationalistic search for true heritage. The important aspect of an *authentic* identity is a sincere belief in the existence of bonds between individuals. However, this philosophical research does not seek to claim that the three conceptualisations of the people inform a self-understanding accepted by all citizens. The much more modest claim is that the contemporary conceptions of popular sovereignty rely on the plausible experience of these relationships. This brings us to the other dimension of peoplehood: the institutional relationships between individuals in a polity. The practical institutionalization of such relations has been deemed constitutive of a people (Lagerspetz 2004). As Stefano Bartolini argues, "the participation of an individual within a normative system of a group" creates the group in a sociological sense (Bartolini 2005: 211). The institutional part of the genealogy focuses on normative systems which give purchase to these conceptions in virtue of individuals' membership of such normative systems. Individuals, for example, become a citizenry because their ascription of citizenship is made meaningful through the ability to claim rights against the state. These systems, moreover, create boundaries between polities through homogenization within the polity and differentiation from other polities (Bartolini 2005: 12-24). The plausibility of each conceptualisation of the people relies on different institutions. This institutionalisation of relationships between citizens results in the 'practical resonance' of these fictions of the people in everyday practices. The appropriateness of criteria of legitimacy depends upon the fact that citizens can plausibly make sense of themselves as 'a people' associated with each conception of popular sovereignty. The conceptual chapters will indicate the relevant institutions for each criterion associated with these conceptions.

Popular sovereignty, however, does not merely aim to make sense of the relationships between the inhabitants of a polity, it addresses the political order within a polity. A legitimation story, by Williams' definition, has to make sense of the organisation of power as a structure. Asymmetrical power relations are a core feature of the autonomous sphere of human endeavour known as politics, and are conceptualised, and justified, in the public mind through modern legitimation stories. Two institutional capacities define how the sovereign state embodies political power: decision-making and

implementation. This distinction is particularly fruitful for understanding the institutionalisation of political order within the European continent. The first capacity refers to a centre empowered to make an authoritative political decision, whilst the second one refers to the resources available to the centre for enforcing those decisions. The latter capacity contributes to making the former meaningful in everyday life (Mann 1984). In other words, the *de jure* claim to make sovereign decisions becomes matched by a *de facto* empirical ability to enforce them (Axtmann 2004: 262-263).[27] This part of the institutional analysis focuses on the organisation of power structures which took shape in the European polity before and after integration. Yet it will be emphasised that political orders are not merely shaped by legitimation stories of popular sovereignty. As Sofia Näsström (2007: 629) reminds us, "peoplehood always is born out of a combination of coercive force and persuasive storytelling." Contemporary realists recognise that politics and coercion play a crucial *transformative* role in the creation of unity among socially pluralistic populations (Sleat 2013; 2014: 17; Stears 2007). Normative theoretical discussions on criteria of legitimacy tend to overlook the importance of existing or emerging hierarchical regimes in legitimation processes (Geuss 2008: 90-94; Sangiovanni 2008). In these analyses, the focus is on the archetypical resource of power: coercive force. However, modern political orders also have other resources at their disposal to rule. Arguably, the most important are money and stories (Maloy 2013).[28] The third source -- stories -- alludes to the importance of legitimacy in sustaining a political order. The agents of the political order shape legitimation stories. This insight, also found in subversive genealogical projects, is important because it tempers expectations of change. As previously stated, realists seriously consider political circumstances when theorising legitimacy. In practice, this means that, while avoiding deterministic *status quo* defences, it is important to take seriously the limits set on political change by the organisation of power, at least in the foreseeable future. To clarify and anticipate my argument, the analysis of the structure of power in contemporary Europe strongly suggests that its current two-tier political order is likely to persist into the near future. This comparative institutional analysis is essential to argue that our

commitment to the contemporary conceptions of popular sovereignty can no longer remain vindicated in contemporary Europe.

VI - Plan for the rest of this thesis

My argument will unfold as follows: the next chapter offers a more in-depth treatment of the theoretical framework. It starts with a more detailed description of Bernard Williams' realist theory of legitimacy. I then argue that, within the modern disenchanted cosmology, popular sovereignty arose to replace divine right as the central concept to structure legitimation stories of the sovereign state. In legitimation stories of popular sovereignty a shared bond between citizens -- the constituent power or 'the people' -- sets the appropriate criteria of political legitimacy for a regime -- the constituted power. Finally, to frame the genealogical inquiry, the three prevalent criteria of legitimacy are presented in the context of the debate on the EU's democratic deficit: output, democracy and identity. These three prominent criteria rely on a distinct understanding of the relationship between EU citizens. The three genealogies reconstruct the underlying contemporary conceptions of popular sovereignty from canonical arguments legitimating the modern state. This reconstruction sets the stage for the realist appraisal of these conceptions in making sense of political legitimacy in Europe's novel political landscape.

The third chapter is the genealogical reconstruction of the contemporary conception of popular sovereignty which informs output legitimacy. In canonical arguments which legitimate the state in virtue of its output, an individual interest in security and economic prosperity that is reliant on common rule binds citizens together. The sovereign state is the legitimate political order due to its ability to provide the preconditions, which procure beneficial outputs. A competent sovereign state can claim allegiance from individuals in virtue of these benefits. What this will demonstrate is that security and economic prosperity have become inextricably intertwined benefits in the modern technocratic conception of popular sovereignty. The state safeguards and manages a capitalist economy in a complex and competitive international environment, circumstances which require expertise in order to create beneficial outputs. In these canonical arguments, the people

is limited to those citizens partaking in the state-governed domestic economy. This conceptual border is not inherent to the relationships between denizens, because these particular necessities and conveniences are, in principle, universal. The border, instead, follows from the arguments' inclusion of protection from other countries, and economic competition with them, to differentiate the polity. What these aspects imply is that beneficiaries' interests are particular to, and aligned with, their political order. In short, these arguments rely upon a technocratic conception of popular sovereignty, because these interests rely upon competent rather than inclusive forms of rule.

The fourth chapter is a conceptual genealogy, which reconstructs the democratic conception of popular sovereignty. Canonical arguments on the state's democratic legitimacy posit the people as *demos*. These canonical arguments focus on three institutions of modern democracies: a constitution, elections, and an (empowered) public sphere. The crucial point for the thesis is that this conception of popular sovereignty makes sense of the democratisation of the state. The conceptual borders of the *demos* derive from the arguments' implicit assumption of pre-existing states rather than being inherent to a principle inherent to posited bond of collectivity. The conceptualisation of the people underlying these arguments consists of individuals with associational interests bound together through democratic procedures. The state's democratic institutions should enable the citizenry to govern themselves. The democratic character of the state should thus legitimate its decisions and their (forceful) implementation. This democratic conception of popular sovereignty prescribes that the ruled are able to influence their rulers' decisions, thereby engaging in self-governance. In other words, the state's democratic institutions offer the means for citizens to govern themselves as the sovereign in modernity's enlarged polities. The democratic state's institutions constitute a necessary framework for a diverse citizenry to self-govern. A legitimate state should enable citizens to participate as free equals in collective decision-making, in determining 'vital interest' from a plurality of positions. In these canonical arguments, the bond of collectivity arises from citizens' participation in these state-centered processes of democratic will-formation, where pre-existing state institutions set the

boundaries of the *demos*. These arguments rely upon a democratic conception of popular sovereignty in which a democratic bond of collectivity is posited between citizens.

Chapter five consists in a genealogical reconstruction of the contemporary identitarian conception of popular sovereignty in which a communitarian identity legitimates collective rule. Canonical identitarian arguments emphasise the importance of cultural homogeneity, expressed in a national identity, for the legitimacy of the modern state for both normative and sociological reasons. This reconstruction becomes essential as this conception of popular sovereignty does imply a border with 'the people' in principle independent from the statist political order. The genealogy features nationalistic arguments of both a more ideological and sociological nature. In both cases, the state is the legitimate political order because its citizens' identify with it as *their own*. Processes of socialisation, rather than particular socio-cultural markers, are necessary to maintain and shape this communitarian identity, which generates associative sentiments with the state. Conversely, the nation-state should protect these processes. The conceptual structure of popular sovereignty is that the people as nation have a communitarian right to self-determination. This argument stresses that the communitarian identity implies a shared understanding of the common good or, more ideologically, the existence of a national will. The legitimate nation-state should empower its nation's will in modern circumstances. The ultimate criterion for the state's legitimacy is the congruence of the borders of the national identity with the nation-state. Later, less obviously ideological arguments emphasise that a national identity is a precondition for a well-functioning mass democracy and welfare regime. The importance of a communitarian identity becomes more instrumental, but it nevertheless remains a fundamental precondition for state legitimacy. The posited bond of collectivity does inform a principle which can determine borders to the people. In these arguments on the *nation-state*, the borders of the identity and the state become fused together. The communitarian identity, however, offers a principle to render the borders of the polity conceptually distinguishable from the state. This identitarian conception of popular sovereignty posits a bond of

collectivity which informs a criterion of legitimacy, and a political principle to distinguish between peoples.

In chapter six, these three contemporary conceptions of popular sovereignty are vindicated at the normative level, and then, by placing them in their institutional context, as functional heuristic tools. This chapter on the state's legitimacy is essential for appreciating the importance of historical circumstances when appraising conceptions from a realist perspective. Firstly, the chapter vindicates the multiple-faceted conception of popular sovereignty. The contemporary conceptions can together offer an account of the sovereign state as the legitimate political order in relation to the key characteristics of modern enlarged polities: its complexity, value pluralism, and closure. From this realist perspective, I offer a vindication of the commitment to this conception of popular sovereignty at the normative level. The next part of this chapter moves to the institutional analysis to illustrate the historical circumstances in which these three conceptions could function as heuristic tools to make sense together. A central concern is to clarify how citizens could willingly suspend their disbelief of the political fictions of the people. In short, I argue that the three normative systems -- a state-governed domestic economy, democratic state institutions, and public socialisation into a national identity -- became institutionalised within the borders of the territorial state. As a result, relationships were created between the same group of territorially-bound individuals, which gave a degree of plausibility to the people as beneficiaries, as *demos*, and as nation simultaneously. Congruency between these systems within the state's borders meant that output, democracy, and identity became plausible as appropriate, and even complementary criteria for the state's legitimacy. The particular organisation of political power within Europe's polities is essential because it organises them around the sovereign state. The fiction of sovereignty, in turn, made sense due to the organisation of a single decision-making centre with extensive implementation power within its territorial borders. The central fictions of popular sovereignty were thus conterminously institutionalised within European state polities before integration. The contemporary conceptions of popular sovereignty gained the practical resonance necessary to act as heuristic tools for political agents to make sense of state legitimacy.

Chapter seven's central aim is the appraisal of our commitment to this multi-faceted conception of popular sovereignty in making sense of the EU's legitimacy. This systematic appraisal relies on an institutional analysis of the European polity in contemporary Europe. Before turning to the transformation of the institutional landscape, I reflect upon the particularity of national institutional arrangements and understandings of popular sovereignty in relation to the state's legitimacy. The claim is that integration has not homogenised the national polities in a meaningful way, hence deep diversity characterises the European polity. Integration has, however, cumulated in a set of increasingly autonomous technocratic and political decision-making institutions at the European level. European integration, as a set of economic and political processes, thus resulted in a reconfiguration of normative systems of peoplehood within the European polity, and the organisation of power. The upshot, so I shall argue, has been that economic and democratic systems remain largely institutionalised at the national level but that borders between national polities have opened up. Moreover, judicial-economic and civic-democratic systems have become a reality at the European level. By contrast, attempts at pan-European identity building remain largely unsuccessful; particularistic national identities persist because national spheres remain relatively closed. European integration has impacted the organisation of power within the polity, substantially restructuring it; a second layer of decision-making now exists at the European level, which relies on the successful integration of national implementation structures. The reestablishment of a sovereign political order remains as of yet an elusive prospect. This novel political landscape is, as a result, likely to persist into the foreseeable future. After presenting Europe's novel institutional landscape, I return to the political fictions in order to evaluate whether this multi-faceted conception of popular sovereignty can plausibly make sense of Europe's political order. My conclusion is that the fiction of sovereignty has little practical resonance, and three conceptions of the people make sense but primarily if not exclusively at the national level. I then appraise whether the conceptual structure of these conceptions can function at the normative level. My conclusion of both analyses is that the commitment to this statist conception of popular sovereignty can no longer remain vindicated because it

cannot guide political agents nor make sense of the legitimacy of Europe's political order within its circumstances.

In the eighth and final chapter, I suggest a *demoicratic* reconceptualisation of popular sovereignty. This chapter constitutes the final, normative payoff of the genealogical enterprise into the contemporary conception of popular sovereignty, and its impact on attempts to make sense of the EU's legitimacy. I argue that the institutional analysis gives purchase to the *demoicratic* analysis of the EU. I then suggest a practice-dependent interpretation of the European institutional bonds of collectivity as one of national peoples with transnational bonds between them. This realist analysis informs the subsequent, significant reconceptualisation of popular sovereignty along *demoicratic* lines. The most important shift is that the constituted power is no longer a single sovereign hierarchal centre. Instead, multiple popular sovereigns *simultaneously* create a two-tier political order to govern both national and transnational bonds. This conception is able to make sense of the two-tier political order in the European polity, whilst recognising the continued existence of deep diversity. It is, therefore, both normatively desirable, and can act as functional heuristic tool to guide political agents. Finally, I sketch how this *demoicratic* conception could make sense and guide future developments in Europe's institutional design in overcoming the current democratic deficit. In this manner, chapter eight ultimately returns to the political challenge triggering this theoretical inquiry: the EU's democratic deficit.

Endnotes

[1] Achim Hurrelmann argues that permissive consensus did not disappear, however the unprecedented wave of integration does not align with citizens' wishes. Institutional integration thus clashed with the established popular opinion (Hurrelmann 2007).

[2] Many theories have proposed to make sense of European political integration. It has been a topic of normative political thought since medieval times (e.g. Cheneval 2010: 34; Føllesdal 2007). Early twentieth century integration theorists, however, focussed more on scientific explanations for integration (Diez and Wiener 2009: 17; Dobson 2006: 511; Moga 2009: 809; Pollack 2005: 368-369). The most prominent theoretical currents were federalism (Burgess

2009), (liberal) intergovernmentalism (e.g. Hoffman 1995; Moravcsik 1998), neo-functionalism (e.g. Haas 1958), interactionism (e.g. Deutsch, Burrell et al. 1968), and various forms of institutionalism (e.g. Christiansen, Jorgensen et al. 1999; Pierson 1996; Tsebelis 2002; Waever 2009). More recently, critical theorists have drawn out the normative dimensions underpinning the integration process (e.g. Elbe 2003; Manners 2007; Pollack 2005).

[3] For extensive overviews of the literature, see (Galston 2010; Rossi and Sleat 2014; Runciman 2012).

[4] Some argue that these are compatible, intertwining claims (Mantena 2012: 455), whilst others believe that they contradict one another (Baderin 2014). I am committed to the former, but accept situations in which tensions might arise between particular interpretations.

[5] The realist concept of domination is not the same as the republican value of non-domination (e.g. Pettit 1997; Skinner 1998). The realist concept of domination refers to violent domination through the voluntary application of force, rather than its arbitrary use.

[6] Thomas Fossen's pragmatist perspective on legitimacy echoes a similar account of the implicit normativity of politics (Fossen 2013).

[7] For at least some outside the discipline of political philosophy, this is the sole purpose of normative philosophy (e.g. Wright 2007: 28; 2010: 20-21).

[8] William A. Galston (2010: 409) argues that the realist dispute with between political moralists about human malleability is 'largely empirical' (see also Swift 2008: 371).

[9] I contrast social reality with natural reality following John Searle's ontological distinction between observer independent brute facts and observer dependent social facts (Searle 2007).

[10] Arguably, any academic engagement with politics is normative, however political theorists explicitly engage with these dimensions of politics, whether on a conceptual or normative level (Pierik 2011).

[11] Williams actually uses the term legitimations more often than legitimation stories. He uses the latter in his reflection on his essay 'From Freedom to Liberty' (Williams 2005: 95). I opt to use legitimation stories, because it both stands out from the first term and, as I will clarify in the second chapter, stories resonates with my anthropological interpretation of Williams' work (see also Hall 2014).

[12] This perspective rejects the separation of materialism and idealism in establishing meanings of social reality, instead prioritising practices (see also Taylor 2004).

[13] See also (see also Horton 1992: 7-12). In their own ways, Raymond Geuss (2008: 13-15), Ernst Gellner (Schubert 2014: 19), Charles Taylor (Bohmann and Montero 2014; Taylor 2004) and Jean-Marc Coicaud (2002) emphasize the importance of history for political philosophy.

[14] In philosophy, this anti-foundational understanding has been associated with John R. Searle's work (Searle 2007). In political science, Mark Bevir and Rod Rhodes work on

interpretivism and certain types of social constructivism which reflect this anti-foundationalist social ontology (Bevir and Rhodes 2010: 44).

[15] In a similar vein, John Horton argues that the task of political philosophy is to "… help us to articulate and deepen our understanding of concepts and beliefs, and to clarify the issues at stake in assessing competing interpretations" (Horton 1992: 12).

[16] This understanding of concepts shares similarities with conceptual historians' understanding (e.g. Dahlstrom 2012; Gunnell 1998; Koselleck 1989; Kuukkanen 2008; Palonen 2002; Richter 1986). I have found Kuukkanen's distinction between the history of a word and concept particularly insightful on this topic (Kuukkanen 2008). However, unlike these often contextually informed exercises in the history of political thought, realist philosophers focus firmly on the present relevance (Horton 1992; Williams 2005).

[17] For overviews of the normative theoretical literature, see (Bellamy and Castiglione 2003; Dobson 2006; Føllesdal 2006; Friese and Wagner 2002; Jensen 2009; Lord and Magnette 2004; Wimmel 2007)

[18] Sangiovanni, however, focuses on the question of solidarity more closely associated with justice rather than legitimacy. Enzo Rossi argues that Sangiovanni's reflection on justice (Sangiovanni 2008) is actually an analysis of legitimacy due to its focus on scope (Rossi 2012). This critique could, by logic, extend to Sangiovanni's analysis of solidarity within the EU. However, one might well argue that Sangiovanni proposes a conception of solidarity through a realist lens that takes seriously the particularity of the EU's political regime. Political legitimacy, therefore, is not a separate concept from solidarity but neither is it identical with it, as Rossi suggests.

[19] This methodological discussion might better be described as one of heuristics (Lamb 2009a).

[20] The method originated in the history of ideas and philosophy, but it has gained salience in the social sciences (e.g. Sassen 2006; Somers 2008; Vucetic 2011).

[21] See among others (Bevir 2008; Mulligan 2006: 352-356).

[22] Similarly, Mark Bevir distinguishes between forms of historicism. Yet, for him, genealogies refer to historical explanations of a critical guise (Bevir 2010).

[23] As an opposing case, Quentin Skinner, for example, argues that he provides a description of an alternative tradition, thus implying the enterprise is descriptive rather than philosophical (Skinner 1998).

[24] In philosophical terms, it might be *fact-defective*, however it is not *law-defective.* A law defective statement is a potential explanation with a false law-like structure, whilst a fact defective one has a false antecedent (Williams 2004: 31).

[25] For prominent positions in the methodological debates in the history of political thought, see (e.g. Bevir 1999; Lamb 2009b; Pocock 1981; Skinner 2002).

[26] For a similar distinction, see Sangiovanni on conventionalism and institutionalism (Sangiovanni 2008).

[27] I draw upon Michael Mann, who distinguishes between despotic power -- decision-making -- and infrastructural power -- implementation (Mann 1984).

[28] These closely relate to the well-established typology of three faces of power (Lukes 2005).

Chapter 2: Modern Legitimation Stories of Popular Sovereignty

> NOTHING appears more surprizing to those, who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission, with which men resign their own sentiments and passions to those of their rulers. When we enquire by what means this wonder is effected, we shall find, that, as FORCE is always on the side of the governed, the governors have nothing to support them but opinion. It is therefore, on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular.
>
> David Hume, 'Of the First Principles of Government', I.IV §1

> One of the central features of Western modernity, on just about any view, is the progress of disenchantment, the eclipse of the world of magic forces and spirits.
>
> Charles Taylor, *Modern Social Imaginaries*, 49

I - Introduction

In the previous chapter, I presented the debate on the EU's democratic deficit. This debate makes sense as first-order disagreement on how relationships between European citizens are to ground the EU's institutions. The concept of popular sovereignty, so I argued, continues to shape attempts to legitimate the EU. This thesis aims to appraise the role of popular sovereignty in making sense of the EU's legitimacy through a realist lens. Bernard Williams' political realist thought provides a novel and fruitful approach to this topic. According to Williams, political theory should appraise our normative commitment to particular conceptions of a concept. A vindication depends on its ability to make sense of the legitimacy of a political order within particular historical circumstances at the normative level, *and* its ability to guide political agents'

actions. On Williams' philosophy, concepts are historically constructed repositories of meaning. To reiterate Sangiovanni's distinction between a concept and conception, theorists can posit an abstracted account of a concept. This concept relies upon particular conceptions used in practices. The concept's conceptual structure captures 'family resemblances' between actual historical meanings of a concept. Theorists should therefore turn to history to reconstruct concepts from their conceptions. In addition, a theorist should appraise them from within their particular historical circumstances. This ontological premise informs the choice for a genealogical reconstruction of the contemporary conception(s) of popular sovereignty. My genealogical enterprise consists of a conceptual and an institutional part. In the conceptual part (chapters 3 to 5) the dominant conceptions of popular sovereignty are reconstructed from canonical arguments on the *sovereign* state's legitimacy. I focus on conceptualisation of the 'the people' because they are these conceptions' normative heart and their crucial role in the normative appraisal of legitimacy in contemporary Europe. The second part (chapter 6 and 7) offers an institutional analysis of the historical context. It presents both the institutionalisation of the people and the organisation of power, before and after European integration. In order to assess, whether the commitment to contemporary conceptions of popular sovereignty displayed in attempts to make sense of the EU's legitimacy remains vindicated. The theoretical underpinnings, however, warrant a more elaborate treatment to clarify the assumptions and rationale governing the thesis' core argument.

In this chapter, I discuss Williams' realist theory of legitimacy in more detail, as well as the conceptual structure of popular sovereignty and criteria of legitimacy that constitutes the substantive point of departure for the genealogical endeavour. This chapter is essential to the argument as it clarifies both my interpretation of Williams' realist conceptual framework, which relates historical arguments on the state's legitimacy to contemporary question of the EU's legitimacy, and the empirical observations guiding the genealogy. This method and specific focus on popular sovereignty set this research apart from other contributions to the normative theoretical literature on the EU's legitimacy. In particular, I emphasise the importance of legitimation stories as hermeneutical sense-making devices for *political* reality

in Williams' political thought because this sets him apart from other normative approaches. In short, the commitment to particular conceptions of political concepts, such as popular sovereignty, can only remain normatively vindicated if the reasons make sense of political rule as a *widely acceptable* solution to a state of civil war, without becoming an instrument of domination. In addition, as a conception should guide agents' actions, its political fictions, such as the people, have to have practical resonance in a particular context for them to act as heuristic sense-making devices. In Europe's disenchanted modern circumstances, and here I diverge from Williams significantly, popular sovereignty arose as the central normative concept in legitimation stories of the sovereign state. Popular sovereignty describes the conceptual structure of legitimation stories in which 'the people' determine the appropriate criteria of the modern state's legitimacy. In this conceptual structure, the appropriate criteria of legitimacy for the political regime are set by the conception of citizens' bonds of collectivity. In order to create a meaningful, realist account of popular sovereignty, I employ a genealogical method. The point of departure is the contemporary debate on the EU's legitimacy. Three distinct criteria feature prominently in assessing the Union's democratic legitimacy, namely output, democracy, and identity. These three criteria hint toward the fact that our contemporary conception of popular sovereignty consists, in actuality, of three distinct conceptions. This debate focuses the genealogical reconstruction on these conceptions.

This chapter proceeds as follows: the next section (section II) offers a more detailed account of Bernard Williams' realist theory of legitimacy. According to it, political legitimacy emerges from a normative (set of) claim(s) which justify rulers' coercive use of power against the immediate interests of the ruled. These claims are presented in practice as a holistic narrative; the legitimation story. The latter contain the normative arguments with which to make sense of a particular political order and its legitimacy. As such, on Williams' realist account, a *political* conception of legitimacy has to provide a widely acceptable account of the desirability of the political order within its own historical circumstances in order to remain normatively vindicated. These stories are necessarily ideological, that is, in someone's interest and culturally specific, but they are more than mere tools of manipulation and mass

subjugation. This is because legitimation stories are not only justifications, they also constitute hermeneutical sense-making devices. They make a political order and one's place in it intelligible, often by reducing the complexity of real-world situations. Such simplifications, nonetheless require a degree of mythmaking and, therefore, the willing suspension of disbelief. The practical resonance of central fictions is important in vindicating a conception as a useful heuristic device to guide political agents' actions. In this way, Williams' realist perspective informs the appraisal of our conceptions at a normative and pragmatic level. The next section (section III) introduces the central concept of the thesis: popular sovereignty. The divine right of kings could no longer make sense in modernity's disenchanted cosmology; popular sovereignty arose to take its place. The latter, so I argue, became the core concept in European legitimation stories, which established the authority of the modern state. Appropriate criteria of legitimacy in legitimation stories of popular sovereignty are set by a shared conceptualization of the people. The constituent power is, therefore, the central normative concept for any conception of popular sovereignty. Finally (section IV), the three prevalent criteria of legitimacy in the present EU legitimacy debate are introduced: output, democracy, and identity. These rely on markedly different accounts of the relationships between European citizens. These criteria often result in first-order disagreements on the legitimacy of Europe's political orders, as is apparent in the persistent debate on the legitimacy deficit. As will become apparent throughout the thesis, this reveals that our contemporary conception of popular sovereignty consist of three sets of arguments which rely upon distinct conceptions of the people.

II - Bernard Williams on legitimacy and legitimation stories

Matt Sleat argues that "all analyses or reflections upon politics will inevitably need to embark upon its endeavour beginning with several theoretical assumptions about what the practice looks like, consists of, where its limits are (or what distinguishes it from other spheres of human activity), and what the appropriate aims of politics are, amongst others" (Sleat 2010: 497). Williams' central realist assumption is that legitimation stories constitute the

normative core of our political practices. This central theoretical assumption is drawn primarily from Bernard Williams' posthumously published realist work on legitimacy (2005). My interpretation of Williams' political thought can be characterised as anthropological rather than analytical because I emphasise the importance of stories as hermeneutical sense-making devices rather than adopting his analytical formulaic approach to philosophy.[1] In a nutshell, Williams argued that political philosophy should use "distinctively political concepts, such as power, and its normative relative, legitimation" (2005: 77). He argued that legitimation stories provide justificatory explanations of political order in specific contexts. The exact historical conception employed to make sense of legitimacy should be drawn from actual usage in first-order disagreements. On this interpretation of the practice of legitimation, Williams draws two criteria to appraise normative commitments: (i) does the conception offer a desirable answer to the first political question: meeting the basic legitimation demand? And interrelated, but analytically distinct, (ii) does the conception perform this function plausibly within its historical circumstances: the realist constraint? I shall commence with a description of Williams' historicist understanding of social reality, as it informs these criteria.

An anti-foundational political ontology informs Williams' realist theory of legitimacy (e.g. Williams 2000). He argued that individuals use concepts to guide their practical behaviour in everyday life. Human beings therefore relate to the world through semantic relationships. Echoing Helmuth Plessner's philosophical anthropology (Plessner 2003 [1627]), humans, as reflective beings, can *give accounts* of these relationships (Williams 2000: 483). This reflective mode turns humans into symbolic animals able to (re)construct concepts used in practice. Here, individuals construct stories to make sense their place in the (political) world. Such stories constitute reflective hermeneutical tools, which establish the meaning of the concepts guiding individuals' behaviour (e.g. Askham 1982; Charles Taylor quoted in: Bohmann and Montero 2014; Mink 1978). Stories is, however, a rather common-sense notion, which makes it remarkably hard to give a precise definition of. A defining characteristic can nonetheless be drawn; stories provide answers (Askham 1982: 528). Cosmological stories, for instance, can answer questions about individuals' place in the world. These narratives thus attempt

to make everyday life intelligible by making sense of our semantically constructed relationships to the natural and social world. These holistic devices aim to create coherence in a chaotic world of diverse practices (Lukes 2000). In anthropological terms, stories perform 'magic' because new meanings are ascribed to objects without making any changes to their material properties. This phenomenological need to make sense of the political world lies at the heart of Williams' realist theory of legitimacy (see also Sleat 2007).

Legitimation stories make sense of individuals' place in the political world by offering a coherent and intelligible account of the political order and its desirable functions. Williams attributes a constitutive role to legitimation stories in the creation of political orders:

> The idea is that a given historical structure can be (to an appropriate degree) an example of the human capacity to live under an intelligible order of authority. It makes sense (MS) to us *as such a structure* (Williams 2005: 10; italics in original).

These stories, therefore, not only describe, but also make the practices of rule within the polity intelligible *as an order*. These stories provide what one might call a 'political epistemology' (Laborde 2004) which shapes individuals' personal experience of politics (Tilly 2005: 7-9). Legitimation stories make sense of our place in the political space by organising both facts about rule and evaluations thereof. The latter normative dimension indicates an inherent evaluative focus on the normative acceptability of these hierarchical structures (Hall 2014: 555; Kratochwil 2006: 305; Williams 2005: 11). These stories thus offer guidance in appraising whether to accept hierarchical commands as authoritative or resist them as attempts illegitimate coercion. In summary, legitimation stories offer frames to simultaneously make descriptive and normative sense of hierarchical rule in a polity.

In this context, Williams argues that legitimation stories should provide a normatively acceptable answer to the first political question. The two dimensions of any legitimation story are that they make sense of rule as a political order and, simultaneously, provide reasons for its desirability. Firstly,

legitimation stories should answer the first political question (2005: 3-6). The question concerns “the securing of order, protection, safety, trust, and the conditions of cooperation” (2005: 3), and constitutes, for Williams, a precondition of the human practices called politics. He argues that a hierarchical order with coercive powers is necessary to avoid an anarchical state of civil war. By his own admission, Williams provides a Hobbesian answer to a Hobbesian question (2005: 3). Yet, he quickly adds that the provision of order is insufficient to legitimate a political regime. Responding to the first political question is a constitutive part of any legitimation story. If rulers’ power over their subjects is to constitute a solution to the first political question, however, then something has to be said to those it coerces about what distinguishes hierarchical rule from a state of institutional domination akin to civil war (Williams 2005: 5). In other words, the solution to the first political question should not become part of the problem that politics should solve or at least alleviate. For Williams, rule without widely accepted legitimation stories simply amounts to successful banditry (Williams 2005: 95). The use of coercive power in politics gives rise to the normative principle inherent in politics, the ‘basic legitimation demand’, which holds that a political order should be deemed a desirable solution to the state of anarchy. A hierarchical order without a widely accepted legitimation story constitutes a state of domination. In a rather Rousseauian, moment Williams further clarifies that the power to coerce cannot justify itself; the critical theory principle. The creation of acceptance through manipulation is therefore not a state of legitimate politics but a situation of domination. On Williams’ account, hierarchical orders have to meet the basic legitimation demand in order to establish such a thing as politics rather than domination (Williams 2005: 5). At a normative level, legitimation stories should answer the first political question whilst meeting the basic legitimation demand when attempting to make sense of the political order under which people live. The latter touches upon the importance of a story making sense within particular historical circumstances.

Williams’ realist conception of legitimacy remains context dependent. Legitimation stories dictate the appropriate criteria of legitimacy for the political order within particular historical circumstances. Williams argued that, although the first political question is foundational to politics, once it is solved

it does not remain so but rather requires the elaboration of a solution *all the time* (Williams 2005: 3). The first political question is a precondition in "the justificatory rather than temporal sense" (Rossi and Sleat 2014: 2). A political order however can only emerge if it is deemed normatively acceptable. Put differently, authoritative rule cannot emerge without legitimacy (Barker 2007; Mulligan 2006: 369). Hobbes, for example, argued that sovereign rule is legitimate only for as long as it provides physical security through order. Williams observed that, nowadays, we find Hobbes' answer unacceptable because liberalism has added new demands, such as liberty from excessive government interference (Williams 2005). Contemporary citizens, for instance, might not cooperate or trust each other if their political regime does not conform to the principles of the 'rule of law'. The concept of legitimacy might be considered constitutive of the practice of politics. Each legitimate political order should meet criteria of legitimacy in order to distinguish its rule from civil war and domination. Particular conceptions, however, change significantly from one set of historical circumstances to another or between different political regimes (Sangiovanni 2008).[2] A conception of legitimacy is relevant to 'us around here' rather than being universal in any meaningful way *pace* high liberalism (Hall 2014). Legitimation stories contain criteria of legitimacy for a particular 'we' within a political order (Williams 2005: 68-69). They arise to make sense of legitimacy in particular polities. So despite being a universal aspect of politics on Williams' interpretation, conceptions of legitimacy are ontologically bound up with particular historical circumstances.

Turning to the heuristic dimension, the importance of the 'willing suspension of disbelief' for legitimation stories ability to guide political agents. Williams tends toward a sceptical position with regards to political fictions in modern politics. He argues that modernity's self-consciousness undermines the usefulness of fictions (e.g. Williams 2004; 2005: 94-95). Nevertheless, political fictions continue to impact political actions, thereby shaping the political world. As Edmund Morgan points out, the story takes "command and reshapes reality". An important reason is that these stories are often an imperative for rule, rulers must therefore bend fact to fiction in order to sustain the same order (Morgan 1988: 14). Legitimation stories are, thus, not only passive sense-making devices since they can also shape political practices.

Political fictions within them should, as a consequence, be taken seriously in the theorization of politics (Geuss 2008: 10-11; Morgan 1988: 13-15; Rossi 2010b). Fictions actually perform an important function in legitimation stories because they reduce the complexities of political reality, making it intelligible for individuals. As Francis Bacon poignantly put it "Truth is so hard to tell, it sometimes needs fiction to make it plausible." But fictions, however, require the willing suspension of disbelief (Morgan 1988: 14). The cognitive dissonance between practice and concept underlies this requirement to accept common myths that "defy demonstration" (Morgan 1988: 15). Popular sovereignty, for instance, requires citizens to believe that they are the authority within the polity, whilst being ruled by others. Individuals' willingness to suspend disbelief can be deemed quite remarkable. As Gaetano Mosca observes,

> A conscientious observer would be obliged to confess that, if no one has ever seen the authentic document by which the Lord empowered certain privileged persons or families to rule his people on his behalf, neither can it be maintained that a popular election, however liberal the suffrage may be, is ordinarily the expression of the will of a people, or even of the will of the majority of the people (1939: 71).

Stories' ability to fulfil their functional aim of making sense of political life should, therefore, not be equated with a realistic reflection. The political fictions in them are attempts to make sense out of a complex political world. A fiction's usefulness in guiding political agents' everyday practices impacts likelihood of their willing suspension of disbelief of its mythical properties (Sleat 2014: 327-329). Its usefulness, in turn, relies on its resonance with political reality. As Morgan explains: "In order to be viable, a fiction must bear some resemblance to fact. If it strays too far from fact, the willing suspension of disbelief collapses" (Morgan 1988: 14). The *willingness*, however, also relies upon the perception of desirability. Legitimation stories should offer convincing normative reasons for the many to submit to the few. The legitimacy of rule remains closely tied to the attempt to make sense of hierarchical rule as a desirable solution to the first political question of politics.

Arguably the most controversial point for subversive genealogists, I want to suggest that these stories are not merely manipulative devices for the elite. Genealogists generally argue that the achievement of a legitimate political order relies on elite manipulation of the population. On this reading, legitimacy has been understood as no more than an ideological device for subjugating the masses (e.g. Bevir 2010; Foucault 2003 [1975-1976]). From this perspective, rulers engage in storytelling to pacify them.[3] This pacification arguably constitutes a modern 'achievement'. A relatively stable order can be taken to reflect the success of an elitist mission of civilizing society (Taylor 2004: 31-48). Political legitimacy, as some argue, is therefore a cost effective alternative to both constant coercion and surveillance, and bribery through rewards (e.g. Bartolini 2005: 92; Matheson 1987: 200; Mulligan 2006: 359; Thornhill 2011). These observers seem to propose a rather inherently elitist dimension to the concept of legitimacy. A political order requires the acceptance of the legitimation story by a sufficient number of subjects to maintain its legitimacy. Williams' conceptualisation of legitimation stories seems to echo a similar elitism when he argues that "the state has to offer a justification of its power to *each subject*" (Williams 2005: 4; Italics in original). This definition seems to describe the practice of legitimation as an act of convincing carried out by the rulers.

Williams' legitimation stories, so I want to suggest, can be understood as a product of contestation rather than an elitist practice to create consent of the *status quo*. Two important reasons inform this representation of Williams' notion. First of all, Williams explicitly rejects the creation of obedience through the manipulative use of power in his critical theory principle. In short, if power is the cause of acceptance, whether through violence or manipulation, the subsequent state of affairs does not constitute legitimate politics but domination (e.g. Williams 2004: 225-232; Williams 2005: 6).[4] The subjects should be able to reflect upon and reject rule. When Michael Oakeshott, for instance, argues that the importance of the Hobbesian myth of the state lies in the collective dream of order established through a sovereign state, he implies that citizens should accept this myth (Oakeshott 1975). Vindication of this political fiction lies in the practical outcome of a civic order. This tale of the sovereign state could, however, also result in collective domination through

elite-driven propaganda. In those historical circumstances it would no longer remain vindicated on Williams' account.

This touches upon the second reason to reject the elitist interpretation. Williams' realist theory of legitimacy implicitly relies on the inherent dual-function of legitimation stories in the practice of politics. That is, that legitimation stories are a source of obedience but also resistance in real politics. The modern usage of legitimacy (and thus its meaning) actually implies a closer link to resistance rather than obedience. Shane Mulligan, for example, observes that an ideological transfer of authority from the rulers to the ruled accompanied the introduction of legitimacy into modern political discourse (Mulligan 2006: 359). In a similar vein, the non-voluntary nature of our affiliation with a society could result in assumed obedience to a state (as in certain cast systems); legitimacy instead implies a predisposition toward resistance (Simmons 1999: 742; fn 8). The modern concept of legitimacy introduces the possibility of rejection of rule rather than the unquestioned acceptance thereof. On my reading of Williams, the construction of criteria of legitimacy thus derives from practices of (potential) contestation between rulers and ruled (see also Hall 2015: 8-9). Legitimacy should create "the glue that binds a rule(r) and its right, and directing the behaviour of subjects according to what is right." Legitimation stories can therefore also "function as the wedge to divide the rule and the right, to overthrow either and replace them with another" (Mulligan 2006: 375). In a similar vein, Williams argued that legitimacy is a normative *demand* inherent to politics (Williams 2005: 5), subjects thus require justificatory explanations from their rulers.[5] In practice, as Thomas Fossen's pragmatist approach clarifies, the political practice of legitimation implies that agents aim to persuade others to change their stance toward authority (Fossen 2011; 2013; see also: Mulligan 2007). As such, the ruled can also use legitimation stories to resist political power. This perspective explicates a dimension of contestation between political agents in claiming authority. In practice, political agents engage in diverse practices in which different mechanisms function to establish criteria which make sense of the political order's legitimacy. It brings to the fore that Williams' concept of legitimation stories is better understood as a theoretical reflection on the semantic relationships established in these political practices rather than an

actual account of the practice of legitimation. This interpretation, so I want to suggest, is a logical extension of Williams' practice-based theory of legitimacy as both are reliant on the anthropological notion of legitimation stories.

This is not to say that ruling elites do not often have a privileged position to 'tell' the stories. The superior resources possessed by rulers favours them as public storytellers. No guarantee exists, however, that subjects of power will accept these stories. Rulers are consequently forced to present convincing stories to the ruled or risk losing their legitimacy. Rulers' ability to govern relies upon the acceptance of these narratives by citizens, it is therefore not merely about spreading the stories but also about their widespread acceptance (Williams 2005: 10). The latter is necessary, but as discussed above, certainly not guaranteed on Williams' view (Hall 2015: 8-9). In addition, and Williams does not explicitly address this point, these stories are not merely sense-making devices for the ruled but also for the rulers; they provide meaning to the practice of ruling. Rulers can, in the process, impose normative constraints on their rule (Barker 2001; Morgan 1988: 13-14). Nonetheless, rulers' intrinsic reasons can differ from both their public justifications and their actual behaviour or the perception thereof. Rulers might well perceive an interest in creating allegiances through certain stories without sincerely believing in the story themselves. Yet that same insincerity can become a source for citizens to reject particular rulers. Furthermore, among other advantages, the ruled can contest rulers if they find the criteria built into the stories undesirable, if they believe that the rulers do not meet the criteria, or due to disagreement about the appropriate criteria. Citizens can reject the criteria of legitimacy proposed in the stories told by rulers, or any other political agents for that matter. Legitimacy can thus rightfully be deemed the treasure of politics (Kurtén 2011) for all participants.

Historically, some degree of consensus has emerged around how to make sense of the state's legitimacy, as is evident in the relative stability of its rule. Shared conceptions of legitimacy among the population are necessary to achieve a functioning political order. As Carl J. Friedrich argues, "legitimacy can be achieved only when there exists a prevalent belief as to what provides a rightful title to rule" (1974: 111). A broadly shared conception of the practices of rule and its normative foundation is therefore a prerequisite for

the emergence of a legitimate political order. In this context, a particular conception of a political concept is normatively vindicated "if it can be urged consistently with accepting a legitimate political order for general regulation of the society" (Williams 2005: 120). To return to the functions of legitimation stories, the political theorist should appraise them based upon their capacity to answer the first political question whilst meeting the basic legitimation demand, in a manner which is plausible from within the historical context. In addition, the central political fictions should have practical resonance in order to act as functional heuristic tools. First though, the theorist has to turn to legitimation stories so as to reconstruct the established conceptions of legitimacy and how they are used to make sense of the political order (e.g. Jubb and Rossi Forthcoming - 2015). The conceptual structure of legitimacy can differ significantly in various historical contexts. My claim in the next section is that popular sovereignty describes the shared conceptual structure of the modern legitimation stories which are used to make sense of the legitimacy of the sovereign state.

III - Popular sovereignty in modern legitimation stories

The thesis enquires into the normative commitment to popular sovereignty, which, so I will suggest, conceptually structures modern legitimation stories in Europe. Popular sovereignty is the central political concept of modern legitimation stories. Williams argues that a political theorist should not aim to delineate the correct definition of such a concept when seeking to solve political disagreements. The attempts of utilitarian and neo-Kantian philosophers to provide such definitions were the object of his criticism. Disagreements are, so he argued, part and parcel of the political. Instead, theorists should, firstly, clarify the conceptual structure behind these first-order disagreements and, secondly, appraise our commitment to such a structure in virtue of the practice it is supposed to govern (Williams 2005: 75). In this section, I shall clarify the conceptual structure of popular sovereignty *in* modern legitimation stories. Popular sovereignty delineates what one might call a genre of legitimation stories, which denotes a common conceptual structure even when the particular conceptions differ quite significantly. To

clarify with a metaphor, Agatha Christie's classic detectives, such as *Poirot*, and James Ellroy's *L.A. Noir* quartet are all crime mysteries, despite being markedly different stories. Like its predecessor, the 'divine right of kings', popular sovereignty describes a family resemblance between prominent modern legitimation stories on the modern sovereign state. The concept of popular sovereignty unpacks as a particular conceptual structure, one which now underlies modern legitimation stories. However, as Simone Chambers observes, "Hobbes and Rousseau are both advocates of some version of popular sovereignty, yet they have very different stories to tell" (Chambers 2004: 153). As with murder mysteries, different legitimation stories emerged with their own distinct conception of popular sovereignty and concomitant criteria of legitimacy for the sovereign state. My claim is that popular sovereignty has become the most influential conceptual structure in Western legitimation stories. Williams' normative theory, by contrast, focuses on the emergence of liberalism as *the* modern legitimation story.[6] His emphasis on bare liberalism is not 'wrong' because liberalism, with its focus on freedom and protection of human rights, would arise as a particularly dominant legitimation story in the West. I nonetheless maintain that popular sovereignty became the dominant conceptual structure for embedding conceptions of freedom in legitimation stories of the modern state. Before presenting the conceptual structure behind popular sovereignty, I shall first briefly reflect upon the emergence of popular sovereignty as a functional conception of legitimacy in modern European legitimation stories. Expounding the particular historical circumstances will also contribute to the later clarification of its conceptual structure.

Popular sovereignty arose in Europe, and more broadly the West, as part of a wider shift in cosmology. A brief reflection on the disenchantment of European cosmology offers a potential explanation for the emergence of popular sovereignty. Legitimation stories, as argued above, have to make sense within particular historical circumstances. These circumstances will also influence conceptions of legitimacy. The historicist rationale holds that popular sovereignty should not be understood as a necessary product of objective reason unfolding in history, *pace* certain Hegelian accounts of historical development. Rather, it is a contingent product of autonomous historical

processes. A complex nexus of events gave rise to the replacement of divine rule by popular sovereignty. Yet, philosophically, this shift can make sense as a functional response to significant challenges and, ultimately, to transformations of the political cosmology. The central change in modern Europe has been the upheaval of the cultural cosmology from a Christian to a secular one, or at least to a 'temporalisation' of religiosity (Taylor 2004). Ludwig Wittgenstein refers to the *Lebensform* in this context, which constitutes a broader cultural understanding of men's place-in-the-world, in which other language games are embedded (Wittgenstein 2009 [1953]). Similar concepts include a horizon (Koselleck 1985), culture (Lukes 2000), or cultural background (Taylor 1995b).[7] These concepts attempt to capture the existence of cosmological stories of how the *world* works and of individuals' place within it. This cultural context impacts the plausibility of legitimation stories within particular polities. Too much divergence from the accepted understanding of the world might result in implausible stories which fail to convince enough denizens of the polity, if not outright making no sense at all. In his political theory, Gaetano Mosca provides interpretive evidence of this claim by comparing China, India, and the West. Each conception of legitimacy -- or in his words the political formula -- is situated within a broader cosmology specific to each society. (Mosca 1939: 70-71). In short, the conceptual structure of legitimation stories has to make sense of a political order within the local cosmology. Modernity, and its impact on politics, is a contested subject in academia (e.g. Sleat 2010: 498-500). Nevertheless, as Charles Taylor argues, "One of the central features of Western modernity, on just about any view, is the progress of disenchantment, the eclipse of the world of magic forces and spirits" (Taylor 2004: 49). Williams observed that 'religious or other transcendental justifications' do not function in modernity (2005: 95). Max Weber's notion of *Enzauberung* captures how the processes cumulated in a disenchanted political space (e.g. Williams 2005: 9). This perspective can contribute to a functional understanding of the emergence of popular sovereignty in Europe.

Pre-modern monarchical regimes justified their rule in reference to 'traditional notions of divine right and heredity' (Barkey 2014: 3). Broadly speaking, the divine right of kings legitimates rulers because they represent

God's will on earth. In practice, legal notions, among others, were used to justify and restrain rule, but *gubernaculum* would ultimately rest with the monarch, in virtue of his or her divine right (Pocock 1975: 9-30). This justificatory explanation of Europe's political and social order was dependent upon a shared Christian cosmology. The processes of reformation and the Enlightenment, however, would in their own way challenge the plausibility of this type of legitimation story. The rise of the empirical sciences, and their increased authority, would challenge claims to unobservable knowledge. The reformation, moreover, understood religious experience as an individualized and, ultimately, privatised matter (Habermas and Derrida 2003: 295-296); the impact on Catholicism was similar (Taylor 2004). These processes would challenge privileged religious knowledge as the grounds for justifying authority, including political authority. Furthermore, the reformation created the practical problem of the incongruence of religious beliefs within European polities. Catholic monarchs 'found' themselves governing primarily protestant populations, such as in English Isles, or populations became split across religious lines, as was the case in France. Regicides and bloodshed between religious communities was quick to follow in this context (e.g. Maloy 2013). Transformations in the socio-cosmological understanding of the world contributed significantly to intensifying the challenges facing Europe's political orders. Within these historical circumstances, divine right became too contested to act as the structuring concept in legitimation stories of Europe's political orders. In an increasingly disenchanted political world, the population would replace God as the source of political authority.

Legitimate political orders historically came to justify their rule in the name of the people; popular sovereignty.[8] In early modern Europe, the concept gained salience among monarchs searching for alternative sources of legitimacy to justify their power (Morris 2000: 6). The British monarch, for example, would claim to represent the overarching good of the denizens, including its subjects in the Americas (Morgan 1988: 17-148). This justification would often assume certain common interests. Monarchical regimes would thus turn to the disenchanted concept of popular sovereignty to replace their claims to divine rule. Parliamentarians drew upon republican theories to oppose the rule of absolute monarchs (Tully 1993: 301), with popular

sovereignty continuing to govern their most enduring arguments. Ultimately, their counterclaim of popular representation came to trump the monarchical claim to represent the population. In its early incarnations, however, the will of the people remained a hypothetical or rationalised fiction (Chambers 2004: 154) which was often equated with some objective set of interests. Nonetheless, the people acted as the normative yardstick of the regime's political legitimacy. This initially hypothetical theory of popular sovereignty became increasingly understood in more populist terms; Jean-Jacques Rousseau's justification of sovereign rule of the population exemplifies this shift (Garsten 2009: 93-98). Accepting the idea of the citizenry as the authority of the modern political order, Rousseau argues that citizens should not relinquish their sovereign constitutional lawmaking power to a representative agent. Direct participation in lawmaking should ensure rule in accordance with their sovereign will (Rousseau 1987 [1762]). Rousseau explicitly adds actual consent as a necessary condition to the hypothetical model of popular sovereignty (Williams 2007). On this account, popular sovereignty becomes conceptualised as actual self-rule of the people rather than some assumed or rationalized model. Madison, Siéyès and other constitutional theorists would theorise more representative models better suited to modernity's enlarged polities (e.g. Kalyvas and Katznelson 2008; Manin 1997; Urbinati 2006). In both direct and indirect models, however, the people are the constituent prince of modern secular democracies (Kalyvas 2000). In all three broad strands -- monarchical, hypothetical, and popular -- popular sovereignty conceptualises the modern state's legitimacy in relation to the will of 'the people'.

The concept of popular sovereignty has become the dominant conceptual structure of modern legitimation stories within the West's disenchanted cosmology. Despite being a contingent product of autonomous historical processes, philosophically, it can make sense as a functional conception of legitimacy within this disenchanted cosmology. Most importantly in this regard, popular sovereignty is not reliant on a religious or other metaphysical principle. Instead, it appeals to a disenchanted, temporal aspect present in every polity: the ruled (Kalyvas 2005). This shift has been characterised as 'a marked break from the old world' (Rosanvallon 2011:

120). The change from the divine right of kings to popular sovereignty implied a transformation from a vertical to a horizontal principle of legitimacy; normative authority in the polity transferred from the king to citizens (Laborde 2004: 52). From a realist perspective, a vindication of this replacement lies in its ability to continue to make sense of the political hierarchy's normative desirability in disenchanted circumstances. Its functional use to subjects became the principle for its legitimation (Thornhill 2011). The populist interpretation of popular sovereignty echoes throughout our contemporary democratic understanding, though popular sovereignty is not necessarily democratic (Morris 2000: 6-7). Let us now turn to the conceptual structure in more detail.

Value pluralism offers a fruitful point of entry for clarifying popular sovereignty's conceptual structure. On Williams' interpretation of the practice of politics, legitimation stories should balance a coercive hierarchical order with the inevitable political fact of continued disagreement. Fundamental to political realism is the concern that coercion without acceptance creates resentment, which risks jeopardising the political order. This resentment constitutes the empirical source for civil war. On the other hand, manipulation would also undermine legitimacy as it solves the unsolvable disagreement, which is constitutive of politics. Legitimate politics should strike a normative balance between order and accommodating disagreement in a polity. In modern mass polities, value pluralism arguably transforms disagreement into a more fundamental and perpetual challenge to a political order than before. Citizens' commitment to different values, each with their own objective worth, implies that they cannot be ranked hierarchically (Bellamy 2000). In these circumstances, citizens hold conflicting yet valid accounts of the good and the right, whilst also having to take collective decisions in order to attain order or pursue common projects (Elkin 2001: 1941; Glencross 2014: 3). A central question of legitimacy in modern politics is how far is it politically acceptable for collective decision-makers to coerce individuals? Too much force without legitimation results in resentment which endangers the political order, or raw illegitimate domination. Modern legitimation stories of popular sovereignty offer accounts of how to strike the balance in these particular circumstances.

In these stories, this diverse group of individuals invariably 'transforms' into a unitary source of political authority in virtue of a common bond.

Turning to the conceptual structure of popular sovereignty, this concept frames first-order political disagreements on the state's legitimacy as ones about the relevant bond between the ruled. Despite its internal disagreements, the citizenry acts (fictionally) as the constituent power of a political regime -- the constituted power (e.g. Canovan 2006; Frank 2010). The people are not only the constitutive authority of the constituted order, but should remain the authorizing agent within the polity after its creation (Kalyvas 2005; Loughlin 2014).[9] Power asymmetry, however, is the defining feature of (real) politics. Appropriate criteria of legitimacy are relevant specifically because the ruled cannot constantly act as collective ruler in modern circumstances (Kalyvas 2005). Legitimation stories of popular sovereignty derive the normative limits on rulers from the bond between the ruled. In an abstract sense, the people remain sovereign without actually ruling. First-order disagreements on the state's legitimacy, thus, resolve around the relevant relationship between the inhabitants of a polity. Jonathan White (2010; 2011) argues that communalities between individuals transform them into a people; the bond of collectivity. Ontologically, citizens' beliefs in a particular bond creates a common identity; a first-person plural. This political identity grounds the bond of collectivity (see also Tilly 2005). This bond between citizens should dictate the appropriate standards for a democratically legitimate regime (White 2011: 4).[10] From an ontological perspective, citizens' beliefs should, in effect, dictate the constitutional restraints on the legitimate rule of the constituted power. Theoretically, as White puts it, "Different conceptualizations of the common suggest different positions on why citizens should accept decision-making when it runs counter to their perceptions of self-interest" (White 2011: 6). As argued above, the 'sovereign people' is a political fiction to some extent, and has therefore triggered extensive debates on the people as fact or fiction (e.g. Canovan 1996; Canovan 2006; Chambers 2004: 153-155). This discussion becomes essential in analysing its plausibility in chapters six and seven, however the question is irrelevant for the conceptual structure. If a conceptual structure of popular sovereignty governs first-order disagreements then political agents posit an established

bond(s) of collectivity to determine a political regime's legitimacy. The appropriate criteria of legitimacy in stories of popular sovereignty thus rely, either implicitly or explicitly, on a conceptualisation of the people. A particular understanding of this bond shapes the conception of popular sovereignty. The conceptual genealogies shall reconstruct the bond of collectivity in canonical arguments on the state's legitimacy, though they require a point of departure. The central aim of the thesis, to understand the impact of popular sovereignty on the EU's legitimacy, offers the logical point from which to start.

IV - Criteria for the EU's legitimacy: output, democracy, and identity

The academic debate on the EU's democratic deficit reflects the most prominent criteria through which to make sense of the EU's legitimacy. One central reason to turn to this 'European' debate is the particularity of national debates (e.g. Lacroix and Nicolaïdis 2010b). Europe's national polities have their own unique understanding of many of these criteria, with each relying upon particular constellations of legitimation sources for their own stability. A selection of national cases would therefore privilege particularistic understandings. Moreover, the prominent positions permeate national debates. The reality of these distinct national experiences will feature in chapter seven, as part of an analysis of Europe's contemporary institutional reality of deep diversity. This consideration informs the shift of focus toward the normative debate in EU studies. Three criteria of legitimacy have become dominant in this debate: output, democracy, and identity (e.g. Beetham and Lord 1998; Horeth 1999; White 2011; Zielonka 2006: 182).[11] In their overview article, Friese and Wagner (2002) relate them to different nascent political philosophies on the acceptable form of rule within the European polity. In a similar vein, Marcus Horeth (1999) argues that these standards of legitimacy tend to favour a particular interpretation of Europe's governance regime (see also White 2011). These distinct criteria reflect a similar first-order disagreement on how to make sense of the EU's legitimacy in political and public debates (e.g. Eriksen and Fossum 2004; Middelaar 2009). These criteria rest on a distinct understanding of bonds of collectivity between EU-citizens; it asserts a political ontology (Bellamy and Castiglione 2013; Pettit

2005). These ontologies provide an understanding of 'how society works' (Taylor quoted in: Bohmann and Montero 2014: 5). In other words, they posit existing relationships between citizens in Europe's polity. I treat these as more empirically grounded variations of conceptions of the people, which feature in the genealogical reconstructions. This distinction, to some extent, is more analytical than actual, however it contributes to keeping these parts of the thesis separate. I will present the most paradigmatic arguments for each criterion in relation to the distinct political ontology, which frames Europe's polity.

According to many, the European regime can derive legitimacy directly from its ability to provide beneficial outputs to EU-citizens. The justificatory logic is described as consequentialist, utilitarian, and instrumental (e.g. Eriksen and Fossum 2004: 440; Horeth 1999: 253).[12] A citizen will recognize these benefits and, as a result, will redirect their loyalty accordingly (Haas 1958: 16; White 2011: 11-12). The argument often focuses on the primacy of economic necessities in an age of economic globalisation. A European market is necessary under globalization in order to continue generating economic benefits for citizens -- nation-states cannot adequately meet the requirements to generate these benefits for their citizens on their own (Friese and Wagner 2002: 349; Scharpf 1999: 189-190).[13] Fritz Scharpf argued that the EU should rely on output-orientated legitimacy (1999), thus, 'Brussels can earn the right to act' (Leonard and White 2002). This technocratic argument (e.g. Majone 1996; Scharpf 1999; Vibert 2008) sketches the vision of a legitimate democratic European polity based upon independent institutions, depoliticized policy formulation, and expert implementation to gain popular support. Some argue that this is a democratic form of 'government for the people' (Friese and Wagner 2002: 348). Scharpf, for instance, states that:

> … in the language of democratic self-determination, what matters is the institutional capacity for effective problem-solving, and the presence of institutional safeguards against the abuse of public power (Scharpf 1999: 188).

In a similar vein, Giandomenico Majone argues that the regulatory state represents an alternative non-majoritarian model of democracy (Majone 1996). In this context, rights, such as the four freedoms, often take on a particular 'output meaning', such as being instrumental to economic outcomes or even as outcomes of expert rule (e.g. Beetham and Lord 1998). Technocrats often recognize the need to limit the scope of governance to regulatory instead of distributive policies, yet they believe that some decision-making can legitimately be delegated to experts. Output can thus 'supplement' and 'displace' democracy. The democratic deficit is, through this process, often reasoned away (Friese and Wagner 2002: 348-350). Democratization, moreover, poses the danger of politicizing the EU's expert regime. The technocratic argument holds that "the public good is better realised through professionals in charge, who are not subject to the vagaries, biases, and distortions of democratic and especially electoral politics" (Beetham and Lord 1998: 16-17). These utilitarian legitimation stories rest on a minimalist, or thin, relationship between citizens. EU-citizens share individualistic interests which are reliant on their achievement of cooperation (e.g. Bellamy and Castiglione 2013; White 2010). The political ontology of political singularism captures these relationships between citizens of a polity:

> Political society is simply an aggregate of separate individuals with no politically significant relationship to each other apart from their various mutual contractual agreements. They enter these agreements solely to protect their rights and further their interests (Bellamy and Castiglione 2013: 211).[14]

Whether or not technocrats are aware, or even hold consistent views on the nature of society, for these technocratic arguments to legitimate the EU's rule logically implies such a conceptualization of EU-citizens, with identical shared interests. A particular theory's exact conceptualisation of these interests will delineate the appropriate outcomes and competences which should act as criteria for the EU's legitimacy. The output criterion of legitimacy posits a thin bond of common interests between citizens.

Democratic theorists in the EU-debate reject the idea that utility *should* provide the legitimacy of a democratic regime, such as the EU, in the first

place (e.g. Bellamy and Castiglione 2003; Føllesdal 2007; Føllesdal and Hix 2006: 548). Instead, 'democracy', or rather democratic procedures, are the appropriate criterion of legitimacy for the European regime. Shared democratic procedures should result in political allegiance to the EU. Theorists associated with this position seek a 'civic, political and contractual Europe' (Ferreira 2009: 23) through *democratic* procedures (Bellamy and Attucci 2009). Some theoretical positions are oriented toward reproducing liberal democratic institutions *pace* the modern state (e.g. Føllesdal and Hix 2006). Some of these theorists are primarily concerned with piecemeal institutional innovations aimed at overcoming the democratic deficit (e.g. Bovens 2007; Føllesdal and Hix 2006; Hix 2007). Other so-called Euro-republicans propose post-national institutional innovations to democratize the EU (Eriksen and Fossum 2004: 445), and even defend post-European commitments (Friese and Wagner 2002: 355; 357). In both models, a European public sphere is often deemed a necessary prerequisite for public opinion-formation (Closa 1998: 171; Eriksen and Fossum 2004: 445; Friese and Wagner 2002). Habermas' political philosophy incorporates both traditional federalist concerns, such as a constitution and European parliament, and republican themes of deliberative and participatory procedures, such as a public sphere and referenda (e.g. Habermas 2001). The core of his democratic theory is that: "[The] exercise of popular sovereignty becomes the medium in which citizens give themselves a collective identity in the process of making laws, and solidarity with fellow citizens and attachment to the polity flow from participation in this system of political cooperation" (Cronin 2003: 4). Habermas argues that, 'the collective identity […] exists neither independent of nor prior to the democratic process from which it springs' (Habermas 2001: 15). His theory reflects a widely shared communicative logic which is sensitive to the heterogeneity of the European polity (Eriksen and Fossum 2004: 438). Democratic theorists agree that the institutionalization of democratic procedures should enable Europe's citizens, or at least their associational representatives, to construct a version of the common good. Political allegiance should emerge from (the possibility of) participation in democratic procedures (Cronin 2003: 2). Europe's democratic processes can thus create a degree of homogeneity from initial

heterogeneity (Everson 2011: 140).[15] These democratic arguments rest on procedural bonds of collectivity. Democratic procedures enable oscillation between a minimalist interest and a maximalist democratic cultural bond (which I will discuss in the next part) (White 2010: 110). Bellamy and Castiglione (2013) capture this procedural bond in their definition of the political ontology of a civicity.

> … citizens within a 'civicity' regard themselves as forming a people with certain common interests and values. However, … they also have distinct interests, make divergent rights claims and so differ over many public policies (Bellamy and Castiglione 2013: 213).

One vital interest is the attainment of civil peace, whilst a commitment to democratic values should prevent a return to civil war. Democratic legitimacy depends upon the procedural relationships between citizens. The appropriateness of this democratic criterion relies on the existence of democratic procedures to generate a sense of democratic collectivity.

The third and final set of arguments turns a communitarian identity into the appropriate criterion of legitimacy. Democratic rule, so these theorists argue, relies upon the co-identification of denizens as a cultural community. In other words, political legitimacy rests on a sense of belonging to a cultural community often expressed as a shared identity (Della Sala 2010; Eriksen and Fossum 2004: 442; Friese and Wagner 2002). Bellamy and Castiglione observe that nationalists tend to rely upon a mix of normative arguments and empirical claims (1997: 433-441). This observation is true of attempts to both legitimate Europe's nation-states (on which Bellamy and Castiglione focus) and pan-European rule (e.g. Friese and Wagner 2002: 351-356). Sociological markers, such as a common language or religion, and more cultural-historical ones, such as claims to a common political heritage, ground these communitarian identities. Empirical arguments observe the existence and possible emergence of self-identification on either the national and/or European level: do citizens share a culture? And whether the pre-conditions for its emergence/construction, such as a genuine public sphere, exist or not (notice this was also deemed essential by democratic theorists). These

identitarian arguments have become associated with nationalist objections to further integration. Such theorists argue that the Union lacks a degree of social homogeneity, or at least a belief therein. A core argument is that a mass democracy requires a national identity to function properly. Shared sentiments between rulers and ruled generate trust (e.g. Grimm 2009), which functions as a precondition for reasonable debate (Eriksen and Fossum 2004: 443) and properly functioning welfare arrangements (e.g. Miller 1999).[16] The Union lacks such a communitarian identity; the no-*demos* thesis (e.g. Weiler 1995). The preconditions for a legitimate authority at the European level are, therefore, not met. Moreover, the persistence of national communities results in the normative argument that sovereignty belongs to Europe's nation-states (e.g. Malcolm 1991). Intergovernmentalists argue that the EU should remain, or once again become understood as an intergovernmental organisation (e.g. Lindseth 1999; 2011; Moravcsik 2002).[17] In conclusion, the lack of a European identity results in scepticism toward further political integration, and it informs the perceived need for a degree of 'disintegration'.

This traditionally nationalist set of arguments has also been invoked to legitimate EU-rule. Larry Siedentop's theory exemplifies this argumentative structure. He argues that 'the future of Europe in the world – as well as its ability to create free pan-European institutions – will depend upon its becoming more conscious of that moral inheritance' (2000: 214). Democratic political institutions depend upon a pre-existent community. Siedentop argues that "a coherent identity [needs to preside] over the process of European integration … a moral identity presupposes a story, a story we can tell ourselves about the origins and nature of our beliefs" (2000: 189). A communitarian identity is a precondition for legitimate political institutions. Siedentop argues that Europeans share an individualist Christian identity. (2000: 203) [18] The Union's political legitimacy should rest on the recognition of this shared cultural heritage. Friese and Wagner distinguish between strong and weak theories concerning the necessary cultural relationships between European citizens (2002: 352-353). Strong theories imply that Europeans have a particular culture able to furnish the European project with a communitarian identity, such as Siedentop's Christian heritage. Weak theories propose a more civic and diverse understanding of European culture (e.g.

Delanty 1995; Habermas and Derrida 2003; Smith 1992: 70) or argue that humanist philosophy is a European heritage (Friese and Wagner 2002: 352-353). Both national and European identitarian arguments rest on claims of the existence of socio-cultural relationships between EU-citizens. A politically relevant cultural communality, such as a shared heritage, traditions, and/or values, or the existence of a hostile 'other', is stressed in order to forge a communal identity (Delanty 1995: 1-15; Eriksen and Fossum 2004: 436; Friese and Wagner 2002: 353). The citizens should identify as part of a community to which they belong. Political solidarism is the relevant political ontologies in both variations:

> This view assumes citizens and their representatives possess a sympathetic identification with each other and an underlying agreement on ethical principles. They regard themselves as forming a stable collective unit with common goals (Bellamy and Castiglione 2013: 213).

Political society 'works' as an ontological whole. On a fundamental level, it does not consist of either individuals or groups; citizens, rather, constitute a socio-cultural group themselves. According to these arguments, a communitarian identity is the relevant thick bond of collectivity, which itself acts as the relevant criterion of political legitimacy.

Before moving onto the conceptual genealogies, certain interlocutors in the European legitimacy debate have defended mixed or multi-layered models to legitimate the EU's rule. These scholars argue that criteria can either complement one another in *novel* constellations (mixed) (e.g. Innerarity 2014; Jensen 2009; Lord and Magnette 2004; Lord and Pollak 2010), or particular criteria can legitimate the European regime whilst others the national regimes (multi-layered) (e.g. Bellamy and Attucci 2009: 214-217; Bolleyer and Reh 2012). These theorists recognise that the European and national regimes undermine each other's legitimacy, implying that Europe's multilevel structure directly impacts legitimacy at both levels (Cheneval and Schimmelfennig 2013; Lord and Pollak 2010). They thus argue that one should take into account the stratified structure of the European polity when making sense of the EU's legitimacy. The restructuring of power is indeed a serious

consideration since, as Andrea Sangiovanni persuasively argues, conceptions of political concepts should suit the specific political regime that they intend to govern normatively (Sangiovanni 2008). The institutionalisation of *de facto* sovereignty, as well as the reorganisation of power within Europe's polity since integration, will feature in the sixth and seventh chapters, respectively. Leaving aside whether these institutional proposals make sense to citizens (e.g. Innerarity 2014), they recombine output, democratic, and identitarian legitimacy in their attempts to make sense of the EU's legitimacy. Similar conceptions of popular sovereignty, therefore, remain implied in these attempts, illustrating that the genealogical reconstructions are also relevant for these mixed and multi-layered proposals, because they continue to rely on the same conceptions of the bonds of collectivity.

The three criteria, and their justificatory logic, offer a particularly fruitful point of departure for the genealogical reconstruction of contemporary conceptions of popular sovereignty. As shown, each criterion relies on its own particular bond of collectivity. Each argument therefore rests, on some level, on a distinct conception of popular sovereignty with at its heart a conception of the people informing criteria of legitimacy. These criteria have strong empirical ties to the past because they have often been drawn from the literature on the modern state's legitimacy. The three criteria are not *tabula rasa* constructions of innovative political theorists. EU scholars often rely on existing literature on the democratic nation-state's legitimacy to make sense of the empirical challenge that is the EU's democratic deficit. Fritz Scharpf (1999), for example, drew upon David Easton's system analysis (Easton 1957) for his still influential input-output distinction (see also Sternberg 2013).[19] Habermas illustrates how these criteria can be associated with three received views of democratic politics: liberal, discursive, and communitarian (Habermas 1994). Unsurprisingly then, from this perspective, the criteria of output, democracy and identity were prominent in debates on the rise of the modern state (e.g. Bellamy 2004). During the French revolution, for instance, arguments for citizenship were given alongside instrumental, rational-democratic, or communitarian lines (Stråth and Skinner 2003: 5-6). Therefore, despite the differential effect of the specific historical context and experience of each European country in finding a particular point of equilibrium, Europe's

democratic nation-states became legitimated as the competent providers of benefits, democratic structure, and communitarian identity (e.g. Bartolini 2005; Bellamy 2004). The three criteria inform into a sincere first-order disagreement on how to make sense of the EU as a legitimate political order within national debates (Lacroix and Nicolaïdis 2010b). For instance, the identity criterion fuels Euro-sceptic Schmittian arguments in the German debate, whilst the democratic conception of this criteria informs Smendian justifications for European political integration (Müller 2010a). Despite reflecting the latter democratic impetus, Habermas' constitutional patriotism has been deemed particularly German (e.g. Turner 2004). The distinct constellation of state legitimacy in national communities will feature in chapter seven. In national arrangements, however, these criteria became important justifications of sovereign state's rule. In chapter six, I shall present a vindication of their complementarily in making sense of political rule in modern circumstances. However, I shall first reconstruct each of these conceptions of popular sovereignty from canonical arguments legitimating the state based upon these three criteria.

V - Conclusion

This chapter was essential to the argument as it further elaborates Williams' realist theory of legitimacy, the centrality of the concept of popular sovereignty in modern legitimation stories, and sets the ground for the genealogical endeavour. William's realist theory of legitimacy relies on his interpretive account of the practice of politics. Legitimation stories constitute attempts to make sense of individuals' place in the political world by providing desirable accounts of the political order. These reflective stories contain arguments which propose appropriate criteria of legitimacy for a particular political order. Realist theorists appraise these conceptions in virtue of their capacity to provide a desirable answer to the first political question within specific historical circumstances. In addition, the central political fictions, such as the sovereign people, should be able to plausibly act as realistic heuristics to guide political agents' political practices. Nonetheless, they require practical resonance to remain vindicated in specific contexts. Popular sovereignty, so I

continued, became the dominant conceptual structure of legitimation stories within the disenchanted European modernity. According to it, the constituent power authorises the constituted power. The bond of collectivity between citizens should, therefore, determine the appropriate criteria of the legitimacy of the political order. At this stage, popular sovereignty remains a rather abstract. My genealogical inquiry aims to reconstruct our contemporary conceptions to evaluate their influence and appraise them. The dominant criteria in debate on the EU's legitimacy offer a fruitful point of departure for this enterprise. Each criterion rests on markedly different understandings of the relationships between European citizens. This genealogical enquiry will firstly reconstruct the conceptions of popular sovereignty from canonical arguments on the legitimacy of the sovereign state, thereby creating a more sophisticated understanding of the multi-faceted conception of popular sovereignty which governs the current debate on the EU's democratic deficit. These reconstructions focus on the people's principle and boundary because, on the one hand, they form the normative-conceptual underpinnings of each conception and, on the other hand, they shall set the stage for the institutional analysis. The latter is essential for appraising whether we can remain confident in our normative commitment to the contemporary conception of popular sovereignty, or if they can no longer remain vindicated in contemporary Europe.

Endnotes

[1] The unfinished nature of Williams' political theory can justify alternative readings. For similar interpretations, see (Hall 2014; Forthcoming; Sleat 2007).

[2] In 'Human Rights and Relativism', Williams allows for the philosophical possibility that all humans might agree on some abuses of power (Williams 2005: 62-74). These abuses are often associated with situations of violent domination; hence one could argue that they arise from this interpretive analysis of 'the political', which underpins his body of work on political realism.

[3] This interpretation of legitimacy is often associated with the Gramscian concept of hegemony (Kalyvas 2000) or the Foucauldian notion of governmentality (Foucault 2003 [1975-1976]).

[4] Williams *does* observe that "Of course, the power to justify may itself be a power, but it is not merely *that* power" (2005: 6). To clarify, the power to justify is a power aimed at justifying another power, namely to coerce. The problem arises when coercive power is the source of justification. Arguably, Williams' hermeneutical interpretation of stories clashes with Foucauldian accounts of governmentality. On the latter, the power to influence is sufficient to constitute a form of domination.

[5] In a similar vein, Edmund Morgan argued that "Human beings, if only to maintain a semblance of self-respect, have to be persuaded (Morgan 1988: 13).

[6] His liberalism is arguably not the standard account (compare Hall 2015; and Sleat 2010).

[7] Stories from other spheres of human endeavour also constitute part of an implicit background to political practices (definitions of these spheres are themselves cultural products).

[8] For more extensive overviews on the historical emergence of popular sovereignty in the West, see (e.g. Ackerman 1991; Kalyvas 2005; Morris 2000; Mulligan 2006; Pekonen 2009).

[9] Challenges present themselves when offering a coherent account of the ruled as being both the source of authority and subjects to the same authority. Academics often concern themselves exactly with these challenges normatively (Kolodny 2014a; 2014b), theoretically (Loughlin 2014), and practically (Glencross 2014). Modern democratic theorists tend to emphasise the importance of the persistent political agency of the constituent power (e.g. Bellamy 2000; Glencross 2014).

[10] Chris Thornhill (2011) argues that the functionality of a regime to its citizenries is the only grounding of legitimacy in modernity (see also Abizadeh 2012: 867). The defining feature of political values, however, is disagreement about the appropriate functions of a regime. Nevertheless, an analysis of 'facts and values' is the only plausible approach to reconstruct socially plausible functions, hence Williams turns to history to establish relevant meanings.

[11] Different or more fine-grained definitions feature in particular accounts which are based on similar distinctions (Schmidt 2012).

[12] An alternative 'messianic' argument relies on a future political paradise (Weiler 2012). The EU's autonomous decision-making powers are justified as part of a process toward the future attainment of an ideal. This position is historically associated with the (hidden) agenda of neo-functionalists (e.g. Burgess 2009; Haas 1958; Moga 2009).

[13] This argument also often features in other accounts. Jürgen Habermas argues that the EU is an economic necessity for similar reasons, however he proposes a democratic rather than technocratic Union (e.g. Habermas 1996).

[14] Bellamy and Castiglione's account focuses on a democratic interpretation in which elected representatives *act for* the people's interests (2013: 210). This ontology, however, can also apply to technocrats because Scharpf's conceptualisation of self-determination rests on experts acting for the citizens as acting for the people. Nonetheless, the technocrats deny the need for reoccurring electoral mandate.

[15] For a general discussion of process-based conceptualisations of the people, see (Chambers 2004: 156-158). A similar logic underlies federalism-by-instalments (Burgess 2009: 37) and neo-neofunctionalists (Schmitter 2004: 69).

[16] To illustrate the importance of desire over fact, Friedrich Hayek (1949) broadly offers the same analysis as Miller, yet uses it to argue in favour of interstate integration.

[17] Peter Lindseth has arguably moved toward a more *demoicratic* position. Though his continued emphasis on the administrative and judicial character makes his position debatable.

[18] These models tend to eschew ethnic conceptualizations, which are generally deemed both undesirable and implausible (Friese and Wagner 2002: 352).

[19] For a critical 'Wittgensteinian' perspective on the input-output distinction, see (Kratochwil 2006).

Chapter 3: The People as Beneficiaries of the State

> I want a passionately independent government, because only it offers protection for freedom in the intellectual as well as the economic sphere … I don't want this parliament and party business that will sour the whole life of the nation with its politics … I don't want politics. I want competence, order, and decency.
>
> Thomas Mann, *Betrachtungen eines Unpolitischen*[1]

I - Introduction

In the previous chapter I presented an in-depth treatment of Williams' realist theory of legitimacy. This theoretical reliance on the political practice of legitimation stories translates into two interrelated functional demands for the vindication of conceptions seeking to legitimate political rule: make sense of hierarchical rule as a desirable civic order from within its own historical circumstances at the normative level. In addition, it should offer realistic guidance to political agents, meaning that its political fictions must therefore acquire a certain degree of practical resonance in order to act as heuristic tools. In a disenchanted cosmology, the divine rights of kings could no longer make plausible sense of the state's legitimacy to large parts of the population. Popular sovereignty emerges as the core political concept of new legitimation stories. It describes a new conceptual structure in which the constituent power authorises the constituted power. In this conceptual structure, the people's bond of collectivity should determine the appropriate criteria of legitimacy for the modern state. I then presented the three dominant criteria of legitimacy used to make sense of the EU's legitimacy: output, democracy, and identity. Each of these sources rests, implicitly or explicitly, on some degree of communality between the citizens: a political ontology. Distinct conceptions of popular sovereignty thus govern these arguments. In the conceptual part of this genealogical enterprise, I will reconstruct the contemporary *conceptions* of popular sovereignty from canonical arguments on the state's legitimacy using the same criteria applied to the EU. My focus, as said in the introductory chapter, is set on uncovering the politically relevant relationship for

determining the state's legitimacy. These bonds constitute, on the one hand, the normative heart of each conception of popular sovereignty. On the other hand, these conceptualisations are essential to appraise the commitment to these conceptions of popular sovereignty in contemporary Europe. This chapter is the first of three conceptual ones. In this conceptual genealogy, I reconstruct what turns out to be a rather elitist, technocratic conception of popular sovereignty underlying output legitimacy. Arguments on output legitimacy, as I will show, rely on posited interests between individuals. A limited number of politically relevant shared interests are served by the state. Furthermore, in these arguments, the state conceptually binds them together as a people, because the interests are often, in principle, universalisable.

In this first conceptual genealogy, I reconstruct the conception of popular sovereignty from different canonical arguments on output legitimacy. Broadly summarised, citizens (should) come together in a society so as to build the 'necessities and conveniences of life' (Morgan 2005a: 71-72). The people are conceptualised as beneficiaries of security *and* economic prosperity. The sovereign state is the legitimate political order due to its ability to provide the preconditions for achieving the beneficial outputs, which motivate submission to collective rule; a competent sovereign state can claim allegiance from individuals in virtue of these benefits. My argument is that security and economic prosperity have become inextricably intertwined in this contemporary conception of popular sovereignty. Early modern theorists argued that security was a precondition for an industrious capitalist society, and a capitalist society generated the necessary resources for it to fund its security apparatus. According to these theorists, the state is tasked with safeguarding and managing a capitalist economy in a complex international political economic environment. A competent sovereign state attains these aims effectively. The substantive interpretation of security and economic prosperity did significantly change from early modern commercial to late modern industrial societies. The early modern sovereign state's ability to provide individual freedom and increases in overall prosperity were sufficient to secure its legitimacy. The emerging welfare state, however, was to provide the optimal degree of individual welfare to citizens within its borders; it therefore required an extensive expert bureaucracy to manage the demands

of a capitalist economy, capable of optimising the redistribution of resources. In these canonical arguments, 'the people as beneficiaries' consists of citizens partaking in the state-governed domestic economy. The interests are often universal -- John Locke, for instance, deemed property rights to be God-given. The arguments, however, started to include protection from other countries and economic competition with them. The latter implies that the beneficiaries' interests are particularly dependent upon the political order; the sovereign state comes to provide the conceptual boundary to the popular sovereign. At this stage, I should clarify my use of 'conceptual boundary', as I only touched upon it in the first chapter, and because it will feature prominently in the following chapters. It refers to the principle of exclusion from a people or the effective borders to a people. To Charles Tilly's paraphrase, the ties that bind also bound people from one another (Tilly 2005). The legitimacy of the sovereign state does not rest on cosmopolitanism, but on a people. As a result, the conceptual boundaries of the people constitute an intrinsic aspect of the sovereign state that is legitimated by a conception of popular sovereignty.

This chapter's argument unfolds in four sections, which follow a chronological structure. The aim is to reconstruct, from these arguments on the state's output legitimacy, our contemporary conception of popular sovereignty. The next section (section II) focuses on the period of the rise of the modern state, when feudal societies transformed into commercial ones. The central claim is that security and economic prosperity were yoked together in canonical arguments legitimating the modern state. Sovereign states had to meet these internal demands within the constraints of a competitive international environment. The complexity of the modern political economic environment required competent legislators able to secure these benefits. The subsequent section (section III) focuses on how the organisation of the modern state continues to retain legitimacy in industrialised democracies. The conceptualisation of the people's security and economic prosperity came to include the individual welfare of citizens, benefits which, according to these arguments, required the optimal management of the domestic economy by an expert bureaucracy. The fourth section (section IV) reconstructs the conception of popular sovereignty governing these

arguments. The sovereign state's legitimacy, so I argue, relies on the state being a precondition and vehicle for the attainment of a well-ordered capitalist polity in which produces security and economic prosperity for its citizens. The arguments limit the individuals included in 'the people' to those partaking in the state-governed domestic economy. Thus, in conclusion (section V), the canonical arguments rest on a conceptualisation of the people as beneficiaries of the state in terms of security and economic prosperity. This conception of popular sovereignty remains elitist and technocratic even in modern democratic welfare arrangements.

II - The sovereign state securing commercial society

In canonical arguments on the state's output legitimacy, the dominant conceptualization of the people as beneficiaries yoked together the political logic of security, freedom, and justice with the economic one of prosperity, commerce, and welfare. In commercial society, the sovereign state's rule was legitimated due to it being a precondition for the attainment of these benefits. The state relied upon domestic economic competitiveness to fund military and policing agencies which would maintain order, whilst domestic policies to improve the economic competitiveness secured civil liberties within a system of the rule of law. The two logics were conceptualised as co-dependent. According to these arguments, competent state officials are necessary to make the best decisions in an increasingly complex internationalised political economy. Citizens' obedience to the state relies on the latter's ability to deliver security and economic prosperity. State output is therefore the appropriate criteria for making sense of its legitimacy.

The instabilities of the seventeenth century contributed to making physical security a central concern of Western political thought (Morgan 2005a: 98; Rothschild 1995: 60).[2] The state's exclusive right over lawmaking -- its sovereignty -- was deemed a pre-condition for securing the physical safety of its citizen-subjects. Written at the dawn of the modern state, Thomas Hobbes' *Leviathan* exemplifies one of the most influential justifications for the sovereign state, grounded in the latter's ability to secure the physical safety of

the multitude (Turner 1982: 367). Hobbes' argument starts with a sketch of the state of nature as a war of all against all. He argues that:

> In such condition there is no place for industry, because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation nor use of the commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth; no account of time, no arts, no letters, no society, and, which is worst of all, continual fear and danger of violent death, and the life of man solitary, poor, nasty, brutish, and short (Hobbes 1996 [1651]: 89).

Individuals have the same interest in self-preservation, they thus share an interest in escaping the state of nature. Hobbes argued that individual security is "an absolute precondition of commodious life within a commonwealth" (Hobbes 1996 [1651]: 231).[3] The only stable way to provide security for individuals, so he argues, is the establishment of an absolute sovereign with full discretionary power.[4] Citizens should judge a sovereign's legitimacy on the sole criterion that it does not directly endanger their lives. In Hobbes' own words, "The end of Obligation of Subjects to Soveraign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them" (Hobbes 1996 [1651]: 153). Hobbes argued that citizens create a sovereign lawmaker through a social contract. Subjects remain individuals within society rather than becoming a collective people. An individual can therefore resist the sovereign if it threatens their life, but will not receive protection from other citizens because the sovereign continues to secure their interests. As Hobbes scholars observe, the people in Hobbes' theory of popular sovereignty is the sovereign state rather than the multitude (e.g. Lagerspetz 2004: 227).[5] According to the Hobbesian argument, the legitimacy of the state depends on securing citizens' physical safety through the creation of a civic order. This argument does not rely upon subjects or citizens being the same, but rather posits a bond of collectivity purely in the interest of physical safety.

This interest in security would also come to include the protection of individual liberty from the interference of the sovereign lawmaker. John Locke famously critiqued Hobbes' *Leviathan* when he argued that:

> … to think that Men are so foolish that they take care to avoid what mischiefs may be done them by *Pole-Cats* and *Foxes*, but are content, nay, think it Safety, to be devoured by *Lions* (Locke 1988 [1698]: 328).

Locke's objection relies on the analysis that the absolute sovereign could also pose a danger to citizens' safety. The price for escaping continual fear from others was replaced by a similar fear of the arbitrary will of the sovereign. Hobbes' main concern was how to solve severe internal disorder associated with civil war (Hardin 1995: 176). However, internal security had arguably become a less immediate concern in Locke's time, which made other concerns more relevant. Locke's classical liberal argument holds that authority should be limited as much as possible in favour of voluntary relationships between individuals (Geuss 2002: 323).

In *Two Treaties of Government* (1988 [1698]), John Locke offers a paradigmatic argument for the state's legitimacy in which security includes individual liberty. He argues that the state of nature is not a war of all against all, but rather a harsh but survivable existence. This redefinition of the state of nature changes the reasons for having citizens create a common government. In Locke's state of nature, individuals know a degree of peace but prosperity is limited due to the lack of protection of their property rights. Citizens should opt out of the state of nature to gain "Safety and Security in Civil Society" (Locke 1988 [1698]: 329). Locke stands in the tradition of natural law in which individuals have inalienable property rights of 'life, health, liberty, and estate'.[6] Individuals should contractually consent to the establishment of civil government in order to preserve their property rights (Locke 1988 [1698]: 329).[7] According to this argument, the protection of property rights constitutes the shared interest for living in society. In addition to the protection of these necessities, the establishment of civil society would also result in greater prosperity for the entire community. Locke's argument exemplifies that the state's enforcement of property rights was understood as essential to "achieve

social order and prosperity" (Spies-Butcher, Paton et al. 2012b: 96). He argues that the economic division of labour would result in greater prosperity because property rights would stimulate men's industrious nature (Locke 1988 [1698]: 285-302). The subsequent specialization of activities should furthermore result in overall increases of prosperity within society. With regards to state legitimacy, property ownership requires enforcement by an impartial civil government. The rule of law is therefore instrumental for securing civil liberties, which contribute to the attainment of individual freedom and economic prosperity. According to Locke's theory, the bond of collectivity between citizens is not merely the protection of their security but also economic prosperity.

In Europe, influential arguments on the state's output legitimacy recognised that citizens' interests, and by extension economic prosperity, relied upon the presence of an internationally competitive domestic economy. Resistance theories paid only limited attention to external factors impacting the political community. Hobbes' theory, for example, did not take into account the impact of the scarcity of goods on the conditions of order (Hont 2005: 17-22). Changing conditions in the seventeenth and eighteenth century, such as technological advantages in warfare and the creation of standing armies, resulted in significant increases in the costs of external protection and conquest. Istvan Hont argues that there a transformation from a 'reason of state' to a 'jealousy of trade' impacted the conditions of external safety (Hont 2005). According to the latter logic, military survival of the state depended upon global competition for markets in order to finance defence. Commerce financed war efforts, yet it would also become a reason for waging war. Competition in international markets would come to include the national economy (Hont 2005). "Jealousy of Trade ceased to be a matter only of imperialism, colonization, and sea trade, of taking hold of external resources by practically any means. … economic preparation for war [became] the most important business of the economy as well" (Hont 2005: 24). Canonical arguments on the state's output legitimacy started to include more explicitly this international dimension. The political thought of French economic minister Jean-Baptiste Colbert exemplifies the fusion of the warlike state and the capitalist economy. He wrote that, "commerce is a war of wit and energy

(*d'esprit et d'industrie*) among all nations" (quoted in: Hont 2005: 23). Starting from this assumption, Colbert's state policies aimed to ensure France's survival in Europe's global cutthroat political economy. The management of the domestic economy became an affair of the state. The maintenance of national military apparatus required funds, which were to be acquired through commerce. The latter, however, required that the domestic economy be competitive in international markets. Colbert argued in favour of the liberalisation of France's internal trade, hoping it would accelerate urban growth, which should in turn stimulate agriculture (Hont 2005: 24). Colbert's argument illustrates that the state's survival relied on an international competitive domestic market in "Europe's world economy" (Tilly 1975: 44-45). The performance of the domestic economy, by extension, came to be perceived as an integral part of citizens' safety, and even of their liberty.

Eighteenth-century debates on food supply further illustrate that, within these canonical arguments, the state's output legitimacy relied upon its competitiveness within this international environment. A particularly important concern in Europe was the food supply. This issue was closely related to the state's legitimacy as famine was a major cause of popular rebellion (Hont 2005: 403-419; Tilly 1975: 61-62). The physiocratic argument exemplified how state legitimacy, in order to meet domestic needs, required the protection of national markets from external competition. Despite sharing Colbert's liberal capitalist mindset, the physiocrats argued that the state should protect and prioritise agriculture over manufacturing, and that economic mechanisms required a social-legal order to function. They combined economic capitalism with political 'legal despotism': the so-called paradox of the physiocrats (McNally 1988). François Quesnay, for example, argued that a monarch's enlightened reason of state and absolute power could create the conditions for the given natural order: *l'Ordre Natural* (McNally 1988: 122). The absolute monarch should create the conditions for a 'natural' *laissez faire* economic system. Both Quesnay and Turgot argued the natural economic order would require a single centralised state to overcome partisan interests and to guide the profits toward overall welfare of the citizens (McNally 1988: 123-125; 139). Lockean natural rights became not a source of resistance, but a resource to generate obedience to an absolute monarch (Hont 2005: 90; McNally 1988:

125-126). In order to avoid arbitrary despotism the physiocrats argued that enlightened councillors should guide rational policy-making to ensure the three principles of the natural order: "the right to property; liberty of work, trade, export, and expenditure; and security of person and property" (McNally 1988: 126). After full *domestic* liberalisation, agriculture would consistently grow, creating a secure foundation for France's competitiveness for other resources in the world economy (Hont 2005: 309; McNally 1988: 146). An enlightened absolute despotic state would secure the needs and conveniences of the people within a competitive international environment. This physiocratic argument incorporates "an objectified understanding of the economy" (Taylor 2004: 69-82). The modern capitalist economy is understood as "a connected system of transactions obeying its own laws … [These economic laws] apply to human actions as they concatenate, behind the backs of the agents; they constitute an invisible hand" (Taylor 2004: 164).[8] The state became understood as the necessary precondition for managing the domestic economy in the interest of the people.

The Scottish Enlightenment thinkers would exemplify another canonical school of thought with this objective understanding of the capitalist economy, arguing that free government and an open economy should secure the greatest benefits for the citizens. The state's interests in commerce and citizens' interests in luxury converge, according to these theorists, in the realm of international political economy. In his political discourse *Of Commerce*, David Hume, for example, articulates this logic as follows:

> The greatness of a state, and the happiness of its subjects, how independent soever they may be supposed in some respects, are commonly allowed to be inseparable with regard to commerce; and as private men receive greater security, in the possession of their trade and riches, from the power of the public, so the public becomes powerful in proportion to the opulence and extensive commerce of private men (Hume 1987 [1752]: 31).

Hume's argument illustrates that commerce linked individual civil liberty to economic prosperity. The structural benefits of property rights, so these theorists argue, reintroduced liberty in modern circumstances. In contrast to

the physiocrats, Smith argues that the sovereign ruler, or any other individual or council, lacks the necessary knowledge to organise grain production to meet the requirements of a rapidly growing population. Instead, the 'invisible hand' of the market would ensure demand for grain would be met as with any other commodity (Hont 2005: 88-99). Smith's argument thus explicitly relies on an objectified understanding of the capitalist economy. He argues that property rights provide structural benefits to the citizenry. The poorest laborer in England would become wealthier than the richest king in Africa (Smith 1776a: 19). The legitimate state should thus protect citizens' property rights in virtue of these structural benefits (see also Dunn 1994). Smith explicitly linked liberty to international commerce. He argued that the latter had become the reason for liberty rather than its result in his historical context (Hont 2009). In this regard, Smith's and Colbert's positions show some similarities (Hont 2005: 100). The latter, however, argued that only a bureaucratic command of the economy could ensure the subservience of trade to the common interest (Hont 2005: 24). A strong state should protect the common good from mercantile and other factional interests. Smith and Hume argued, however, that the physiocrats' legal despotism and Colbert's command economy would threaten civil liberties (see also Hont 2009). This would, in turn, constitute a threat to citizens' economic prosperity. To summarise succinctly, these canonical arguments conceptualise the people as sharing an interest in security and economic prosperity, benefits which the state must secure in competition with other polities in the international market.

The impartial state has a legitimate role to play in securing domestic needs and conveniences. A version of this argument for state interference can be drawn from the paradigmatic theorist of the free market: Adam Smith. In his *Theory of Moral Sentiments* (2002 [1759]), Smith distinguished two sentiments, negative 'harm' and positive 'happiness', to which he established two corresponding principles of government: security of society sustained through allegiance to authority, and the improvement of society or the principle of common interest (Hont 2009: 169; Long 2006: 292). Associating positive moral sentiment with the improvement of the life of fellow citizens is desirable; "It is the ornament which embellishes, not the foundation which supports the building" (Smith 2002 [1759]: 100-101). Society "may subsist"

without it because the foundation of a society is (communicative) justice (Long 2006: 306-307). Adam Smith's position in the grain debate illustrates this prioritisation of needs over conveniences (Hont 2005; McNally 1988: 152). He recognised that shortcomings in grain supply could emerge. In dire situations, citizens' needs should trump 'the conveniences' of property rights (Hont 2005: 93-94). The state had to rely on political judgment in such situations to, for instance, open up grain reserves for the common good (Hont 2009). This political judgement could also inform other public works. In the *Wealth of Nations* (1776a), Smith argues that the legitimate sovereign has to fulfil three duties: external protection, internal justice, and the improvement of society (Smith 1776b: 43-192). The first two duties should protect citizens' liberty from external and internal threats. The third one, however, is more closely associated with improvement in life's conveniences due to economic prosperity. The sovereign state should engage in the construction of public works in order to stimulate the national economy, such as education and infrastructure, because of their benefit to all members of society. The state has to construct these public works, because individual citizens cannot afford to sustain them (Smith 1776b: 91-190). Therefore, the legitimate state should engage in projects for the common good if it embellishes society, without causing harm. The justification is the pursuit of the greatest possible output for its citizens. Sincere disagreement between French and Scottish theorists existed on how to achieve the best possible outcomes in the name of the common good. Yet their arguments posit a shared interest in security and economic prosperity among the population. These arguments further introduce a conceptual border distinguishing them from arguably universal interests, because they rely upon the state's competent management of the *domestic* political economy within a complex international environment.

Later canonical arguments would further emphasise the need for a skilled and impartial government in this complex environment. These arguments favour competence over inclusiveness in appraising the legitimacy of the (proto-)democratic state. Immanuel Kant's argument on *Schutzgenosse* exemplifies the competence over inclusiveness argument in safeguarding citizens' safety by the state. His argument proceeds as follows: citizens have the exclusive right to be co-legislators because they are capable of

formulating rational policies. On this reasoning, children, women, but also laborers and shopkeepers were not allowed to participate in the legislative process. Kant, however, adds that they should still be considered free (as human beings) and equal (as subjects) (Kant 1991 [1793]: 77-78). Non-citizens are *co-beneficiaries* of the security created by the rule of law (Rothschild 1995: 67). The latter secures objective interests for all the state's subjects, thus generating output legitimacy. Kant's defence of a constitutional monarchy in his *Perpetual Peace* further illustrates the lack of a necessary conceptual link in his political thought between civil liberties and political rights (Kant 1991 [1795]). His *Schutzgenosse* argument focuses on the attainment of security through capable government. A similar justificatory logic was found in the British parliamentary system of the time, which even included some welfare rights for *subjects* (Harris 2004; Mann 2005b: 56). A competent legislator would secure its subjects' objective interests; competent rule was thus essential to generating output legitimacy for the state.

In this context, even theorists of the democratic revolutions did not necessarily argue that natural liberty required political rights. In the French revolution, Emmanuel-Joseph Sieyès argued that "society was constituted by mutual need and the exchange of goods and services" (Hont 2005: 134). A large state is necessary to secure the interests of "internal peace, external security, and common welfare" (Hont 2005: 484-485). In her interpretation of Sieyès, Nadia Urbinati argues that he associated civil rights with a universal pre-political status. Political rights, by contrast, derive from the artificial construction which is the state and therefore do not require universality (Urbinati 2006: 150-151). The extended political machine required to maintain a commercial society should be managed by the active few in order to pursue the good of the 'politically passive, although socioeconomically active, many' (Urbinati 2006: 143). The latter need only vote for representatives and should not be expected to govern a complex modern commercial republic. Capable rather than inclusive government is necessary to safeguard natural individual liberty in modernity's complex circumstances (Urbinati 2006: 151). In the French context, the design of the French republic should ensure rule by the competent few, a natural aristocracy whose political judgement would be guided by impartiality and rationality towards the common good (Urbinati

2006: 151). A capable state elite should thus rule to achieve the objective interests of the masses.

The argument also featured in the debates on the legitimate form of the early modern American republic. James Madison's arguments on representative government, for instance, include a very similar meritocratic trope (Gueniffey 1994: 102-103) in that he advocates rule by a natural aristocracy (Hamilton, Madison et al. 1987 [1788]: 126). In this historical context, his argument did not refer to moral superiority but, once again, to the ability to govern in complex circumstances (Kalyvas and Katznelson 2008: 101-103). Statesmen required a good education in order to form sufficient expertise in statecraft to rule a modern mass republic. The complexity of modern politics implied that the "permanent and aggregated interests of the society" (Hamilton, Madison et al. 1987 [1788]: 123) were safer in the hands of educated elites. Thomas Jefferson, who is often considered more egalitarian than Madison (Brugger 1999: 115), argued, for the same reasons, that representatives need to be suited to the task of government (Helo 2009: 42-43). These theorists' arguments reflect a need for competent legislators able to attain safety *and* economic prosperity. In Elkin's interpretation of Madison, property rights are essential outputs for the legitimacy of a modern commercial republic. "Without, such rights, the commerce that produced the economic prosperity that the new government promised, and on which it rested, would be impossible to achieve" (Elkin 2006: 799). These rights would result in a defence of other rights and liberties (Elkin 2006: 799). Other rights relied on limited government, and a system of checks and balances associated with impartial rule of law. In these canonical arguments, the legitimacy of the modern sovereign state relied on *capable* governors to secure optimal benefits for their citizenry. Citizens' shared interest in security and economic interests constituted their bond of collectivity. State legitimacy depended on the creation of these outputs, which tended to inform a preference for competence-oriented rather than inclusive forms of rule.

III - The expert bureaucracy at the service of industrial society

The arguments in the previous section make sense of the legitimacy of the modern state during the rise of commercial society. Centralised and impersonal forms of rule replaced earlier more arbitrary and personal feudal relationships. The modern state came to govern through a legal framework grounded in the protection of property rights and the freedom of contract. Its regular character facilitated emerging European market economies (Bellamy 2004: 6). These well-regulated market economies enabled competition in an international capitalist environment (Lassman 2000: 93). Modern theorists redesigned political institutions to adapt to the emerging socio-economic reality of capitalism.[9] Their canonical arguments emphasise the need for the competent governance of these complex economies in the pursuit of citizens' necessities and conveniences of life. The initially limited role of the state, however, would significantly expand when, in the nineteenth century, most European societies transformed from commercial into industrial ones (Sartori 1976: 20). In addition, the extension of political franchise, which now included non-property owning citizens, resulted in an expansion of the scope of political power in the private and public spheres (Habermas 1992a: 122-129). These changes in historical circumstances impacted the conception of what constituted citizens' interests. Individual security, for instance, required protection from the insecurities of the market, while a more egalitarian ethos informed a greater degree of redistribution of the conveniences of life (Gellner 1983; Marshall 1950: 26). The administration of late industrial mass society by experts became a precondition to the optimal fulfilment of these demands in an increasingly complex environment. These arguments thus hold that popular sovereignty requires a competent and extensive state bureaucracy to serve citizens' interests.

In these justifications, the modern state was provided with a greater degree of responsibility over redistribution of the outputs of the industrialised capitalist economy in order to better provide for citizens' security and economic prosperity. Prussian Chancellor Otto von Bismarck's defence of the social service state -- arguably a proto-welfare state (Briggs 1961) -- reflects a central shift in the conceptualisation of security within these circumstances. Bismarck argued that it was the state's duty to provide for its citizens safety.

This duty also grounded their subsequent obedience.[10] An inability to work would directly impact citizens' physical safety due to the lack of income to secure food and housing. On this logic, therefore, the state should guarantee a social minimum for its citizens so as to protect the latter from the vagaries of industrialised life. This argument reflects an adaption of the concept of individual security to suit the context of industrialized market economics, namely through the inclusion of a social minimum. The state therefore became involved in a greater number of political-economic tasks. Bismarck introduced compulsory social security regimes in the 1880s to insure against sickness, accidents, old age, and invalidity (Briggs 1961: 246-247; Preuß 2004: 38). In addition, he was committed to the "positive advancement of the working classes" and argued that "the state is not merely a necessary but a beneficent institution" (Bismarck quoted in: Briggs 1961: 248-249).[11] The Bismarckian state could rely on Cameralism to implement these schemes: a "systematic application to government of administration routines" (Briggs 1961: 247). The Bismarckian Cameral 'welfare' state illustrates that the broadening of the conception of individual safety in industrial society was accompanied by an expansion of the state's capacity to implement decisions. Output legitimacy in Bismarck's work would rely, once again, on an expert state bureaucracy.

In a similar vein, influential political theorists asserted that governing a complex society to the benefit of citizens requires that the legitimate state possess a competent and impartial bureaucracy. In the section on the executive power in his *Philosophy of Right* (Hegel 1991 [1820]: 328-336), for instance, Georg Wilhelm Friedrich Hegel provided one of the first theoretical treatments of modern bureaucracy as a requirement for competent state rule (Shaw 1992: 381). He argued that private individuals lack impartiality because they exclusively pursue their self-interests. Societies, so he argued, require a 'despot' that is guided by the best scientific knowledge. Hegel and other developmental thinkers of the time believed that the state was the carrier of a moral mandate (Kim 2002: 435). The judiciary, cameral bureaucracy, and military constitute the bureaucratic state apparatus responsible for the implementation of executive orders.[12] On the issue, Hegel argued that this 'universal class' protects civil society from fracture and advises the monarch

in matters of public affairs (Kim 2002: 436; Shaw 1992: 382). The influence of this logic on political practices is reflected in the eighteen-century flirtation with Enlightened monarchs, such as Frederick II, Joseph II, and Catherine the Great (Taylor 2004: 165-166). This emphasis on scientific knowledge reflects a continued commitment to objective accounts of social reality, which would allow an expert bureaucracy to make impartial decisions for the common good of the citizenry. The legitimate state should ensure the best possible outcomes in its citizens' interests, though it was dependent upon this expert class to ensure delivery of these outputs.

In canonical arguments, the *Weberian* bureaucracy would become the instrument of European states for achieving security and economic prosperity. Weber posited that the modern bureaucracy should be a technically competent implementer of policies within the state's territory. The latter's defining feature, famously, is its ability to maintain a monopoly on the legitimate use of physical force within a territory (Lassman 2000: 89);[13] the bureaucratic administration of rule is pervasive and necessary in modern societies.

> … *real* rule, which becomes effective in everyday life neither through parliamentary speeches nor through the pronouncement of monarchs but through the day-to-day *management of the administration*, necessarily and inevitably lies in the hands of *officialdom,* both military and civilian (Weber 1994: 145; italics in original).

The bureaucracy should act as a disinterested implementer of values.[14] It should occupy the space between civil society and decision-makers. An instrumental rationality should govern its practices: *Zweckrationality* (Kim 2000: 215; Lassman 2000: 85). The expert bureaucracy's authority derives from its rational-legal implementation of decisions.[15] Weber, however, observed the danger of it 'transcending' its auxiliary status. Unlike Hegel, he deemed the bureaucracy as a closed group with its own powers and interests rather than as a Universalist class (Kim 2002: 436-437), but nevertheless aligns with him in that he saw an extensive bureaucratic infrastructure as a necessity for the implementation of policies in mass (democratic) societies.

The modern state would thus require an expert bureaucracy to pursue the common good. Weber's thought exemplifies the logic according to which the emergence of a bureaucratic state is a necessary precondition for modern rule; in some canonical arguments however, the (assumed) impartiality of this group would justify their distinction from democratic decision-makers.

The rise of modern bureaucracies made it feasible to imagine greater influence in attaining the common good. One particularly influential strand of thought, which often legitimated greater state interference, was utilitarianism. According to the paradigmatic utilitarian argument, state legitimacy relied on the creation of optimal overall utility, which was often defined as the minimisation of harm and maximisation of happiness. Historically, they would justify greater state interference than classic liberals, like Locke (Pettit 2005: 158).[16] The state could increase overall happiness through social reform projects, toward which Adam Smith expressed a clear sentiment of scepticism (Smith 2002 [1759]: 276-279). The rise of social sciences, however, bolstered confidence in such claims (Hardin 1995: 189). This utilitarian argument did not necessarily result a rejection of the rule of law in favour of arbitrary *ad hoc* decisions. For instance, in *Civil Law,* Jeremy Bentham legitimates the state (the legislator) as the guardian of rights (Kelly 1990) in virtue of the positive consequences of rights as *part* of individuals' welfare (Binmore 1998; Goodin 1995). In a similar vein, John Stuart Mill argued that physical and psychological security are a prerequisite for other utilities (Mill 2005 [1861]: 52), which the state can only secure through the rule of law. The state should rely upon rational, impartial administration of the law due to the *tendency* of this process to produce the greatest happiness. The same argument could also inform more progressive policies and advocate for greater degrees of redistribution to increase the overall welfare of citizens. The state, however, could reasonably achieve these aims only through an extensive bureaucratic apparatus supplied with the scientific knowledge, resources, and other capacities for the implementation of these policies. As these utilitarian arguments serve to illustrate, a competent bureaucratic state will serve the objective interests of the citizens.

This emphasis on objective interests would also inform a particular strand of democratic thought. Sceptical even of the moral wisdom of the

citizenry, some sought to safeguard liberal democracy *from* its citizens (e.g. Lippmann 1930; Schumpeter 1976). In these arguments, freedom was deemed an essential, objective interest, and elite corruption formed a threat to the citizenry. Joseph Alois Schumpter's argument on electoral democracy exemplifies this stance against inclusive government. In response to the atrocities of the Second World War, he argued that citizens are reduced to animals in the realm of politics. Their political participation should therefore be limited to voting on representatives to rule in their name. The main purpose of an election is not to reflect the popular will, it is an institutional tool to keep elites uncorrupted (Schumpeter 1976: 269-283). Political elites are thus not fully trusted with the impartial protection of citizens' interests. The main common purpose of politics was to secure the institutions which create liberty -- whether or not the public and elites wanted it. As David Held also observes, he characterises this 'democratic' vision as a technocratic one because citizens are subjects ruled over by a competent elite rather than governing themselves (Held 1996: 194-198). Further bolstering this characterisation, other democratic elitists, like Walter Lippman, argue that experts with the necessary knowhow for optimal decision-making in complex mass societies. This elitism implies a Hegelian paternalistic rather than a Weberian instrumental understanding of bureaucracy. The state's expert elites would secure needs and conveniences of life for its citizens (Lippmann 1930). These theorists tended to embrace a limited state in order to avoid the terror of totalitarian regimes; underpinning these arguments was an objective interest in security. An expert bureaucracy would thus generate beneficial outputs legitimating state rule in mass democracies.

Despite their differences[17], Europe's liberal democratic states became welfare states. The creation of state bureaucracies across Europe might well have contributed to this development. In contemporary politics, welfare tends to focus on economic prosperity and welfare (Beetham 1991: 140-142; Dahl 1999: 917). Democratisation and nation-building contributed to 'an equality area' *within* European polities (Bartolini 2005: 111). To secure its output legitimacy, the state required an extensive administrative bureaucracy in order to balance economic performance with more egalitarian redistribution, as well as successfully delivering an expanding range of benefits to its citizens (e.g.

Mann 2005b: 62). This bureaucratic state is capable to negotiate, on the one hand, maintaining citizens' motivation to remain productive and, on the other hand, achieving a relatively equal redistribution of wealth and resources, respectively (Hardin 1995: 180-181). In early modern commercial societies, the rule of law was the most feasible route to prosperity, with private charity as a complementary system to support destitute (Marshall 1950: 31-33).[18] Since the Second World War, it became more realistic to conceive of the possibility of sustaining growth whilst distributing resources more equally. Economic performance enabled fulfilment of the necessities and conveniences of life of citizens. According to canonical arguments, state bureaucracies possessing expert knowledge are a precondition of economic management capable of maximizing the overall welfare of its citizens in complex modern political economies. The state's preferred economic policy -- Montarist or Keynsian (Morgan 2005a: 58-76) -- remains contested. The sovereign state, however, is deemed a precondition for a well-functioning capitalist market, regardless of the policy (Spies-Butcher, Paton et al. 2012a: 114). The welfare state was thus deemed necessary for the generation of output legitimacy in the context of complex (post-)industrial societies.

According to canonical arguments, states should both safeguard security for all its citizens and optimize their welfare through social services (Briggs 1961: 228; Marshall 1961: 288). T.H. Marshall's arguments on the development of the British welfare state exemplify the increased importance of a more equal distribution of wealth in attaining output legitimacy.[19] The concept of the welfare state reflects an established consensus on the modern state's duties (Marshall 1961: 287). In his lecture *Citizenship and Social Class* (1950), Marshall argues citizenship makes individuals part of an egalitarian welfare community (Marshall 1950: 70). In this community, the universal demand for social rights results in a legalistic claim for social justice. The duty to work transforms from being a market outcome to an individual's right to claim against the state (Marshall 1950: 43-44). The benefits of rule transform into rights against the state (see also Bellamy 2004). On this new theorization of outputs as rights, the state has to provide employment as a matter of entitlement, and must compensate in those cases in which it could not generate the demanded outputs. In the process, he observes the importance

of the modern expert bureaucracy; the rationalization of the economy through bureaucratic management should establish fair wage distribution (Marshall 1950: 72-74). In the European context, social justice would become one of the most important objectives of welfare states, but its attainment relied on an expert bureaucracy. The transformed bond of collectivity in which outputs became claims to rights meant that the democratic state had to actively manage the domestic economy.

An expert bureaucracy became an implicit assumption in modern theories of justice, which display a tendency toward favouring competence over politicisation. John Rawls' influential *Theory of Justice* (1971) contains a canonical argument in favour of egalitarian redistribution of economic prosperity in the pursuit of social justice. Rawls famously used the individualist methodological device of the original position,[20] in which citizens would determine the most just distribution of goods from behind a veil of ignorance which would mask social positions (Rawls 1971: 118-192). Citizens behind the veil, uncertain of their future position, would divide political rights equally, thus resulting in a fair distribution of social benefits. Yet, in an inversion of the classic liberal argument, Rawls theorised that economic equality must be the norm but that inequality is only acceptable if it benefits the least well off -- the *difference principle* (Rawls 1971: 75-83). Rawls' argument echoes a utilitarian calculus on overall welfare in which the state has to balance motivation and redistribution.[21] The theory suggests that an objective principle of social justice is determinable with sufficient knowledge. On this argument, the most equal outcome reflects the rational will of the people in the original position in the face of uncertainty. As has been observed, Rawls effectively requires that the citizens behind the veil of ignorance be experts in the social sciences (Hardin 1995: 189). In practice, the substantive ideal of social justice *requires* an extensive bureaucratic state to optimise the benefits for the citizens. Rawls' political thought reflects a conception of popular sovereignty that posits a fictional rational will rather than an actual one. This final part of the genealogical reconstruction illustrates that the conception of security includes economic minimum incomes to survive in capitalist societies, and that economic prosperity starts to take equal individual welfare as the norm, rather than overall aggregate prosperity. The ties between citizens as beneficiaries

would be strengthened because citizens can only flourish in “a polity that seeks to ensure both a social minimum and an equitable distribution of wealth” (Morgan 2005a: 70). These arguments confer a pivotal position to the modern bureaucratic state in securing safety and economic prosperity for *all* citizens within the polity. As Rawls’ political thought exemplifies, a rather technocratic conception of popular sovereignty continues to structure contemporary arguments on output legitimacy.

IV - The beneficiaries of a competent state in a complex political economy

The importance of output legitimacy derives from understanding the state as a collective enterprise in securing benefits for citizens. In fictional accounts of the creation of the state, these benefits constitute the justification for submission to collective rule. The state’s provision is the source of its legitimacy. One can distinguish two output criteria legitimating the state’s rule. First, the sovereign state is a necessary precondition to achieving the necessities and conveniences of life. Some political ‘outputs’ are unattainable without a sovereign political order in modern circumstances, such as safety from foreign invaders and the rule of law. The modern state is therefore legitimate no matter how inefficient. Second, each modern state should provide citizens with security and economic prosperity. It thus has to actually provide these benefits for its citizens, and can be deemed illegitimate if it does not fulfil its purposes.[22] On this interpretation, citizens are mere ‘fair-weather friends’ of a state, leading this source of legitimacy to often be characterised as unstable (Taylor 1995a: 197). Furthermore, the state is illegitimate if it does not pursue the shared interests of the polity. Elites pursuing their own interests or factional interests rather than the good of all citizens constitutes a state of corruption (Beetham 1991: 142-145).[23] In this tradition, the output legitimacy of the modern state relies on scientific knowledge of the objective good of its citizens. The complexity of modern circumstances informs a meritocratic or technocratic trope in these arguments. Whether in the case of commercial republics or industrialised welfare regimes, the sovereign state provides security and economic prosperity. Furthermore, the state has to

govern a capitalist economy in accordance with objective principles, and within a competitive international environment. This objectivistic background results not in a requirement of popular (democratic) rule *per se* -- if at all -- but in the need for a competent government, and so the arguments often imply a sovereign one. The legitimacy of enforcement agencies, impartial judiciary and expert bureaucracy lies in their competence in governing effectively and to the greatest utility within this complex environment. Canonical arguments thus stress competent, impartial government in order to attain the benefits of security and economic prosperity. Citizens are conceptualised merely as beneficiaries of these benign expert institutions which characterise the modern sovereign state.

This genealogical reconstruction's focus on the people brings to the fore the intertwinement of security and economic prosperity, and how the sovereign state should provide both these outputs. This conception of popular sovereignty posits self-rule in terms of whether common rule serves the shared interests of the ruled. These arguments conceptualise the people as sovereign in so far as the state is beholden to serve the good of the people: *salus populi suprema lex esto*. Citizens should obey the sovereign state, because it is in each citizen's individual and, only by extension, collective interest.[24] The sovereign state does not necessarily represent beneficiaries' actual will, but rather their enlightened will or objective interests. On this understanding, the existence of diversity within the polity *per se* is not denied, but deemed politically insignificant. Certain values, such as religious convictions, have become part of the private realm, they are therefore inconsequential in determining the state's legitimacy (Sleat 2013: 142). Throughout this genealogy it was argued that these canonical argument make sense of relevant collective bonds in terms of a shared interest in security and economic prosperity. The primary concerns of early modern theorists were the state's monopoly on force and the capacity of the rule of law to ensure external security and domestic order respectively. The civil liberties associated with the latter were rightfully expected to stimulate the domestic economy and thus increase aggregate prosperity. In more contemporary arguments, economic prosperity has become more a matter of welfare increases for the entire population. Expert bureaucracies ensure competent

economic management, balancing productivity with redistribution. In both cases, state legitimacy continues to depend on the pursuit of the overall interests of all citizens. The ruled remain the popular sovereign in virtue of the fact that the state should pursue *their* shared interests. The people as beneficiaries of security and economic prosperity underpins these canonical arguments on the modern state's legitimacy, and informs this conception's criteria of output legitimacy.

The centralised sovereign state provides a border to the political community. Citizens' interest in the necessities and conveniences of life are theoretically universal, that is to say, the interest in security and economic prosperity is not particular to any set of individuals. A Lockean heritage, arguably, continues to echo through in this conception of popular sovereignty. As such the bond of collectivity sets criteria of inclusion, but it does not offer any for excluding individuals from the people. A capitalist economy is in principle without boundaries. Furthermore, essential rights and needs, such as sustenance, are also conceptualised as universals, even within these arguments. Several technocratic theorists, August Comte, Karl Marx, and David Mitrany, rely upon this feature of the conceptual structure to delegitimize the modern state or at least legitimate other regimes. Sovereign rule might be a precondition for security and economic prosperity, but this type of argument offers no inherent reason for allegiance to a particular state. A functional explanation could be given which, for example, coincides with the borders' of the domestic economy. However, such an argument does not derive conceptually from the bond of collectivity, but from the historical contingency of a state's particular circumstances. In their specific contexts, the provision of these benefits did nonetheless result in the legitimation of modern states. These arguments took for granted the effect of polity membership on the transformation of these interests. In the early modern grain debates, for instance, citizens' prosperity relied on the ability of the state to secure their survival in an economically competitive international environment. The modern sovereign state continues to set the conceptual borders of the people as beneficiaries. It consists of apparatuses with experts, a diplomatic-military apparatus offering external defensive and offensive capabilities, an impartial legal system protecting individual liberty and

governing the capitalist economy, a rational administrative bureaucracy capable of implementing redistributive policies in a complex environment, and, most importantly, a sovereign legislature that defines shared interests. State apparatuses contribute to policy implementation capacities which are united under a sovereign decision-making centre. These institutions govern a particular territory which, as we shall see in chapter six, becomes essential for the modern conception of popular sovereignty to make sense of the state's legitimacy. The people, conceptualised as beneficiaries, are tied together through shared interests in security and economic prosperity, and receive their conceptual borders from the sovereign state, which governs the domestic economy.

V - Conclusion

This chapter is essential to this realist analysis of the impact of popular sovereignty on the EU legitimacy debate by reconstructing the technocratic conception underpinning output legitimacy. Such a conception on the legitimacy of the state depends on its ability to provide for citizens' security and economic prosperity. The definitions of security and economic prosperity transform over time, arguably adapting to historical circumstances. Leaving aside the exact definition, these shared interests in security and economic prosperity constitute the bond of collectivity relevant to setting appropriate criteria for the state's legitimacy. This bond, however, offers no inherent borders to the people because its concerns are generally deemed universal. In principle, any provider of the necessities and conveniences of life could be a legitimate political authority. The sovereign state, however, determines the conceptual borders of the people by shaping their particular interests, implying that Smith and Colbert might be deemed correct in their distinct empirical analysis of the needs of the British and French populations' shared interests. In both cases, and in more contemporary arguments, it was necessary to simultaneously provide security and economic prosperity. The technical expertise of statesmen, the judiciary, and, later on, bureaucracy were deemed essential in attaining these benefits in a complex and cutthroat international political economy. This shared interest constitutes the bond of collectivity,

which transforms a diverse group of individuals into a people *qua* beneficiaries, whilst the state-governed domestic economy sets the conceptual border of the people. Popular sovereignty is interpreted as government of the political economy by the sovereign state, in order to attain *its* citizens' interesting security *and* economic prosperity. This conception is, therefore, rather elitist and technocratic in its tendencies.

Endnotes

[1] Quoted in (Kennedy 1985: xxiv).

[2] The concern of political thought with security (*securitas*) can be traced back further to Ancient Greece and Rome (Mansbridge 1998: 7).

[3] Hobbes aims for more than mere survival. He refers to the conveniences of life in the commonwealth. In relation to the role of the sovereign, he argues that, "The Office of the Soveraign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he trusted with the Soveraign Power, namely the procuration of *the safety of the people,* to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him. But by Safety here, is not meant a bare Preservation, but also all other Contentments of Life, which every man by lawfull Industry, without danger, or hurt to the Common-wealth, shall acquire to himselfe (Hobbes 1996 [1651]: 231).

[4] The fear of disorder in the polity informs Hobbes' choice in *Leviathan* for an absolute sovereign over an aristocratic or democratic council because the latter two run a greater danger of disagreement and subsequent civil war: a return to the state of nature. These options are still present in Hobbes' *De Cive* (Hobbes 1998 [1651]), which inform more democratic interpretations of Hobbes' political theory (see e.g. Tuck 2006).

[5] Although coming from a markedly different metaphysical position, Samuel Pufendorf illustrates that the Hobbesian security argument might also rely upon a conception of the multitude contracting to become a people. Pufendorf argues that there are two contractual moments in which the would-be citizens first unite and then consent to common government (Pufendorf 1994: 208-217). In Pufendorf's first contractual moment, households consent to establish a political community out of fear of other human beings (Pufendorf 1994: 202-208). This recognition of a shared interest in physical security informs the creation of a people. In the second contractual moment, the people establish the state as the sovereign lawmaker; output legitimacy thus becomes explicitly linked to the people's bond of collectivity.

[6] Locke arguably found his justification in the natural law tradition "The *State of Nature* has a Law of Nature to govern it, which obliges everyone: And Reason, which is that Law, teaches all Mankind who will but consult it, that being all equal and independent, no one ought to harm

another in his Life, Health, Liberty, or Possessions…" (Locke 1988 [1698]: 271). On the importance of theological beliefs in Locke's political thought, see (Dunn 1990; Stanton 2011; Tully 1993).

[7] Arguably Locke believed that citizens should sign the contract as an obligation to God (e.g. Dunn 1968; Stanton 2011), but his consent driven theory nonetheless echoes through in contemporary arguments on voluntary subjection to common rule in recognition of its benefits.

[8] This theoretical intertwinement gives purchase to Marxist critiques of the modern Western state as necessarily being capitalist. Some argue that a market logic has become intrinsic to the state (Spies-Butcher, Paton et al. 2012a: 133-137).

[9] Habermas argues that the liberal model of the state represents the legal institutionalization of economic society (Habermas 1994: 7), see also (Sassen 2006: 407).

[10] Bismarck's interpretation of security is reflected in his speech to the Bundestag on 20 March 1884 during the introduction of the law for workers' compensation. He argued that "[The real question] is whether the state – by state I always mean the empire – whether the state has the right to abandon to chance the performance of a responsibility of the state, namely, to protect the worker from accidents and need when he is injured or becomes old, so that private companies form that charge premiums from the workers and the employers at whatever rates the market will bear. … Gentlemen, freedom is a vague concept; no one has a use for the freedom to starve. But here freedom is also in my opinion not at all limited and not in contradiction with itself. The proposal intends a freedom in the organization, but it makes the execution obligatory." (http://www.germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=1809 last accessed 30 January 2015).

[11] Other or actual motivation might well have been the creation of allegiance and the postponement of class war. Nevertheless this reasoning would feature in canonical arguments on the state's legitimacy.

[12] [Hegel's] ideas can be summarized into three theses. First, the rationale of bureaucracy is the division between modern economic society and the constitutional state. Second, bureaucracy is an impersonal organization in which the separation between office and its incumbent is essential. Third, the mode of bureaucratic activities is mediation between constitutional norms and concrete situations, subsuming the particular into the universal and concretizing universal norms" (Shaw 1992: 388).

[13] "An association of rule shall be called *political* association only inasmuch as its existence and the validity of its ordinances within a definable geographical *territory* are continuously guaranteed by the application and threat of physical compulsion on the part of the administrative staff" (Weber 1978: 54).

[14] "The state itself has no *intrinsic* value in that it is a purely technical instrument for the realization of other values from which alone it derives its value, and it can retain this value only as long as it does not seek to transcend this auxiliary status" (Weber quoted in: Kim 2002: 437).

[15] Weber's famous *ideal* types of legitimate rule are the rational-legal, traditional, and charismatic (Weber 1978: 215-251).

[16] Glover captures the moral essence of utilitarianism as follows: "Acts should be judged as right or wrong according to their consequences. Happiness is the only thing that is good in itself. Unhappiness is the only thing that is bad in itself. Everything else is only good or bad according to its tendency to produce happiness or unhappiness" (Glover 1990: 1-2).

[17] Gosta Esping-Anderson's (1990) well-known ideal models of welfare regimes are the liberal, corporatist, and social democratic ones. Alternatively, and more recently, Ferrera, Hemerijck, and Rhodes (2000: 20) distinguish between a Scandinavian, Anglo-Saxon, Continental, and South European model.

[18] Charity is arguably typical for Anglo-Saxon models, whilst solidarity grounds continental systems of allegiance (Kapeller and Wolkenstein 2013).

[19] As Richard Bellamy points out, however, Marshall's narrative of rights expansion does not reflect the actual historical process (Bellamy 2004; see also Harris 2004).

[20] I am departing from Pettit's claim that the Rawlsian conceptualisation of the people is a *civicity* (Pettit 2005). In his later work, Rawls did seem to move more toward such a position. In his early writings, however, the logic of his argument tends to rely upon individual rather than group interests.

[21] Rawls' commitment to neo-Kantian position results in an explicit rejection of utilitarianism, a stance which has been criticized (Hardin 1995: 181-183). Moreover, contemporary utilitarian philosophers, such as Robert Goodin, defend the welfare state for similar reasons (1995). See especially chapter 5 'Responsibilities' (Goodin 1995: 81-87), in which he argues that the distance between consequentialist and deontological positions on the role of the welfare state are minimal.

[22] On a similar distinction drawn from Locke's theory, see (Simmons 1999).

[23] In the democratic argument, as we shall see, a partisan group can govern in its interest as long as it remains susceptible to popular democratic pressures.

[24] Geuss argues that Rawls' initial theory of justice represents such an exercise in ideology. The aim of the thought experiment is not to offer an objective account of the argument but to convince its public of the theory's conclusions (Geuss 2008).

Chapter 4: The People as a Self-Governing *Demos*

> The populace that is subjected to the laws ought to be their author.
>
> Jean-Jacques Rousseau, *The Social Contract II.VII*

I - Introduction

In the previous chapter, I argued that arguments on output legitimacy rest on a technocratic conception of popular sovereignty which posits the people as beneficiaries of security and economic prosperity. The latter constitutes the politically relevant relationship between the ruled. Following this conceptual structure, the sovereign state should serve citizens' political-economic interests Expert institutions act here as precondition of, and vehicle for, the attainment of these benefits. The relationship between citizens offers no inherent exclusion criterion because security and prosperity are universalisable interests. In these arguments, the state effectively gives closure to this conception of the people, *qua* beneficiaries, by defining its conceptual border. David Hume argued that the right to rule only makes sense if the public good is self-evident (2000 [1740]: 359). The existence of pluralism in enlarged modern polities, however, clashes with any meaningful substantive claim of shared interest. The reality of social pluralism, and the attendant contestability of the public good, forms the point of departure for canonical democratic arguments. In these arguments, the benevolent state does not 'correct' the factional interests pursued by some in favour of the pursuit of an objective and overarching shared interest. Inclusion of citizens on an equal basis in democratic procedures should instead ensure that decision-makers pursue the popular will. The contemporary democratic conception of popular sovereignty posits the people as a *demos* prone to internal conflicts, but nonetheless bound together through free and equal participation in collective will-formation processes.

The genealogy in this chapter reconstructs the conception of popular sovereignty that underpins the argument in which democracy is the appropriate criterion of legitimacy. The conceptualisation of the people

grounding these arguments is one of individuals with associational interests bound together through democratic procedures; the people as *demos*. The term popular sovereignty is much more salient in these arguments, albeit a particular 'democratic' conception thereof. The democratic character of the state legitimates its own decisions because the constituent power governs itself through the constituted power (at least to some extent). Democratic state institutions constitute a necessary framework for a diverse *demos* to self-govern, hence democracy becomes the appropriate criterion for state legitimacy. The focus is on three specific institutions of modern democracies -- constitutions, elections, and an (empowered) public sphere -- which together provide citizens with the means to govern themselves as the sovereign of the political order. A legitimate state enables citizens to participate, from a plurality of positions, as free equals in collective decision-making, in constructing shared positions in the pursuit of 'vital interests' and commitment to common values. The democratic position thus holds that the relationship between citizens arises from participation in state-organised processes of democratic will-formation. It is, however, famous for not providing a criterion of exclusion; the well-known democratic paradox. These arguments, in a move similar to the technocratic conception of popular sovereignty, instead rely upon the territorial closure of the modern state's institutions to set borders around the *demos*. The conceptual boundaries again follow from the political order rather than the people.

This chapter unfolds in five sections. Unlike the previous chapter, the arguments are primarily clustered around specific democratic institutions; constitutions, elections, and the public sphere. These arguments, however, illustrate that they complement another in attaining democratic legitimacy. These institutions are discussed roughly in the chronological order in which they arose. The following section (section II) focuses on constitutions as the institution, which ensures the equality and liberty of citizens. According to early modern arguments a democratic constitution should protect individual citizens from the state. The interpretation of its role expanded to protect diversity and ascribe political rights to influence state decision-makers, both of which fall in line with a more inclusive and pluralistic conception of the *demos*. The next section (section III) introduces the key arguments on representative

government. Elections legitimate state institutions because parliamentary representatives should construct a conception of the polity's common good from pluralistic positions within society. A more associational dimension of the *demos* is emphasised here, unlike early modern constitutionalists' more aggregative focus. The same democratic conception of popular sovereignty nonetheless continues to govern these arguments. The subsequent section on the public sphere (section IV) focuses on a line of arguments which stress the importance of public deliberation for self-government in mass democracies. A public sphere creates conditions for continuous participation by enabling citizens to influence decision-makers and each other. Public deliberation should result in *demos* with a degree of common purpose, or at least agreement, on practical procedures. Deliberation, as a result, is also a means for self-governance. The next section (section V) reconstructs how the democratic conception of popular sovereignty informs the need for democratic legitimacy. The legitimate state has to institutionalise democratic procedures which enable its citizens to partake in their self-government. Democratic procedures thus constitute an egalitarian, procedural bond between citizens. And while democratic citizenship is a universal of principle, state citizenship establishes the conceptual border of the people. In conclusion (section VI), the arguments presented here rely upon the criterion of democracy, understood as a particular set of complementary institutions, to legitimate the modern state. The people as *demos* are bound together through democratic procedures, which enable their self-government. This democratic conception of popular sovereignty continues to inform modern demands for the democratisation of Europe's decision-making centre.

II - The democratic constitution as a guarantee of citizens' equality and liberty

Canonical democratic arguments make sense of the state's legitimacy in the context of pluralistic modern mass polities. In contrast to Enlightenment thinkers and relativists, contemporary pluralist theorists acknowledge the existence of different value systems of objective worth and which cannot be hierarchically ordered (Bellamy 2000: 189). This particular understanding of

pluralism, however, did not permeate political thought until fairly recently. From Roman times until the 19th century, faction was a prerogative term to denote interest-based groups that endangered the common good (Sartori 1976: 3). French revolutionary Saint-Just, for example, decried that: "All faction attempts at undermining the sovereignty of the people … In dividing a people factions replace liberty with the fury of partisanship" (Quoted in: Sartori 1976: 11). This sentiment was not exclusive to Rousseauian republicans; American liberal republicans also feared the impact of social pluralism on the stability of modern republic. As a result, they introduced institutional mechanisms to deal with the instability caused by the unavoidable existence of societal pluralism (e.g. Brugger 1999; Kalyvas and Katznelson 2008). These mechanisms would enable democratic participation in state decision-making procedures. In summary, a legitimate state should institutionalise procedures in which citizens can participate freely on equal footing. The democratic constitution is the first institution to ensure the state meets the criterion of democratic legitimacy.

The political constitution has become understood as "the best means for the recognition and protection of the rights and liberties of the citizens" (Castiglione 1996: 417). Two sets of constitutional normative constraints on the powers of government ensure this aim: basic rights and the separation of powers (Habermas 1994: 7). First, basic rights should ensure a sphere of freedom from government interference for citizens to pursue their own aims. John Locke's argument on inalienable property rights is representative of this paradigmatic argument. Federalists opposition to the inclusion of a bill of rights in the constitution drew upon Locke's understanding of *natural law* (Morgan 1988: 282-283). The temporal popular sovereign, so they argued, cannot grant itself the rights given to them by their Creator (e.g. Rush 1993 [1787]). In contrast to their Anglo-Saxon counterparts, rights and liberties were not self-evident truths for continental thinkers. Citizens had to first attain rights against their absolutist rulers. In these circumstances*, popular* power came to be deemed necessary to attain rights and liberties (Ackerman 1991: 25-26; Gueniffey 1994: 106). From the contemporary perspective, the French revolution constitutes a historical instantiation of the citizenry 'capturing' the state from the aristocracy. Citizens (in practice some citizens) directly

participated in ruling over the polity. In one of his speeches, Siéyès describes this regime not as a *ré-public*, but as a *ré-totale* (Hont 2005: 140). The *ré-totale* was "an inappropriate re-enactment of the ancient republic in large modern countries" (Hont 2005: 491). One reason for its inappropriateness was the inherent threat of factional rule. In a modern republic, rulers would only constitute part of the population. This ruling faction would coincide with other interests. A *ré-public* protected individuals from factional decisions through rights and freedoms. This constitutional protection was particularly important in representative systems in which majoritarianism was the practical decision-making mechanism.[1] In a similar vein, the Anti-federalists in America argued that basic rights are an essential "method in limiting the legitimate sphere of action of public authorities" (Manin 1994: 43). A constitution should guarantee citizens' private sphere since the legislature represents only part of the popular sovereign, it acts as a safeguard of their basic rights from factional interference by the state. A democratically legitimate state has to abide by these normative limits to its reach.

The democratic constitution also institutionalises a separation of powers. The latter should further protect individuals from the concentration of power in modern states, which could threaten their freedom. Jean-Jacques Rousseau for instance -- a theorist more often associated with the French revolution -- argued for the Lockean distinction between the legislative and executive branches in his *Second Contract* (Rousseau 1987 [1762]: 173-176). He posited that direct self-rule would result in corrupt rule (Loughlin 2014: 232). In his *Spirit of the Laws* (1949 [1748]), Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, articulated the canonical argument on the separation of powers: the *trias politica*.[2] Going a degree of separation further than Locke, he expounded the logic according to which the lawmaking powers of the state should be divided across three branches of government: executive, legislature, and judiciary. This organisation should avoid abuses of power, which could create fear among the population by crushing their sense of liberty (Montesquieu 1949 [1748]: 152; 183-184). The separation of powers would safeguard individuals from tyranny of the state. In the Constitutional debates in America, federalism was understood as another important institutional mechanism for restraining the federal state's power. That being

said, many federalists argued that the system of checks and balances represented a means to temper passions in politics. Their function, therefore, was not to restrain power, but a tool to slow down decision-making procedures and ensure dispassionate decisions in the name of the common good. Parliamentary deliberation acted as a process of clarification for overcoming the limits of individual rationality (Bellamy and Castiglione 2013: 210). Anti-federalists, however, argued that the system of checks and balances should act as a further limitation on the scope of state power (Dunn 1994: 220-221; Manin 1997: 61-62). The separation of power across branches and levels of government should prevent state powers being monopolised by a tyrannical factional majority in order to protect the individual.

Early modern canonical arguments tended to focus on individuals' freedom from government interference. They tended to posit a conception of the people as beneficiaries sharing a common interest in individual liberty rather than as a *demos*. The protection of individual liberty was deemed beneficial to the citizens of commercial societies. Germaine de Staële and later Benjamin Constant observed that modern citizens came to cherish their private lives over public engagement (for better or worse) (Kalyvas and Katznelson 2008: 127). Constant, for example, argued that citizens might prefer to be set free from the burdens of public life (Constant 1988 [1819]: 326), which would allow individuals to continue with their everyday lives without 'wasting' too much time on politics (Constant 1815 [1988]: 204). This public-private divide became a particularly influential re-imagination of society (Taylor 2004: 101-108). The private sphere would contribute to avoiding dissent in a pluralistic society because it offered a space for individuals to pursue their vision of the good. The public-private divide continues to act as a liberal mechanism to cope with the pluralism characteristic of modern mass societies (Sleat 2013: 142). The aforementioned restraints on state power should secure individual liberty in the private sphere. This protection, however, would also come to act as a recognition of pluralism in more contemporary democratic arguments.

Nowadays, citizenship acts as a bond that recognises and accommodates social pluralism within the polity. According to canonical

democratic arguments, the democratic constitution institutionalised two core aspects of people as self-governing *demos*. First, the constitution attributed citizenship with associated rights and liberties. Subjects of the state thus became free and equal citizens within the polity. Second, citizens also came to be recognised as a sovereign collective. 'We, the People' are the rightful constitutional sovereign of the polity (e.g. Lindahl 2013; Loughlin 2014). Democratic constitutions should thus empower citizens collectively as well as protect their individual rights (Habermas 1994: 2). In modern democracies, citizens should freely enter the public realm with their private 'factional' interests, as Hannah Arendt observed (1998 [1958]: 33). Public processes of will-formation should enable the citizenry as popular sovereign to make, or at least influence, collective decision-making processes. Citizenship enables the autonomous participation of the ruled in processes of collective will-formation. According to these contemporary arguments, the democratic constitution is an essential institutional mechanism for ensuring citizens' liberty and empowerment in these processes. The state's democratic legitimacy, in part, relies on the manner in which the democratic constitution enables the popular sovereign to form a collective will. The next two sections analyse canonical arguments which legitimate the modern state through two central processes of will-formation: voting and public deliberation. These democratic procedures, together with the constitution, create the institutional framework through which the people, as *demos*, engage in their self-governance. On these arguments, as we shall see, these procedures constitute the politically relevant bonds of collectivity between an essentially diverse citizenry.

III - Will-formation through elected representatives

The democratic legitimacy of the modern state relies on the popular election of representatives in decision-making procedures. This popular dimension of democratic legitimacy is implicit in the etymology of democracy as rule by the *demos*. In the classic Greek typology, representative government fell into the category of the rule by the few rather than the democratic rule of the many. At root, therefore, the popular sovereign should engage in self-governance, though this has historically transformed from a direct to a representative style.

This conceptual transformation arguably altered the meaning of democracy (e.g. Dunn 2005; see however Manin 1997). Some therefore assert that modern democracy relies on a degree of guardianship (Dahl 1999). Early modern theorists, who drew upon the model of the Athenian city-state, also argued that real democracy was only possible in small communities. Jean-Jacques Rousseau, for example, remained sceptical of whether legitimate republican rule would be possible in modern circumstances.[3] The size of the modern republic made direct democratic self-governance impossible. Representation became a necessary institutional mechanism because neither social homogeneity nor constant participation were deemed feasible in modern enlarged polities.

Electoral representative government became the necessary institutional form for democratically legitimate states. In modern circumstances, representation was necessary, desirable even.[4] On the one hand, as we saw in the previous chapter, some modern theorists argued that, within complex societies, ordinary citizens did not have sufficient knowledge to secure the common good (e.g. Montesquieu 1949 [1748]: 154). (Proto-) democrats, on the other hand, affirmed that representatives could construct a common will. One can consider Sieyès, who has been considered as one of the founders of representative government (Manin 1997: 1), and who argued that a common opinion could emerge from a diversity of opinions by means of representative structures. He posited a state of equality between the members of the third-estate; the national sovereign body should therefore be *represented* equally in the nation's legislature (Sieyès 2003 [1789]-b). This representative body could form a common will through a competition of views. In his *Views of the Executive Means Available to the Representatives if France in 1789* (2003 [1789]-a), he argues that:

> Doubtless the general interest would be nothing if it were not someone's interest: it has to be the one interest among various individual interests that is common to the greatest number of voters; hence the need for a clash and coincidence of opinions (Sieyès 2003 [1789]-a: 40).

This open debate should exclude the most extreme opinions from the decision-making procedure. The outcome of parliamentary debate is a single decision. This *decision* does not represent a 'universal' truth, but it represents someone's interest. (Sieyès 2003 [1789]-a: 39-40). Still, it is peacefully constructed from a plurality of starting positions. In a similar vein, Thomas Paine (1997 [1792]) defended representation within the modern republic due to its potential to transform a plurality of positions into a singular position on the common good without the risk of regressing into civil war, in contrast to Ancient republics. The diverse interests of individuals could become a common good through the reasoned deliberation of their representatives. In other words, the representative system introduced the practical possibility of transforming diverse opinions into an account of the common good (Paine 1997 [1792]: 180-181). Representative government, as demonstrated, is a legitimate form of decision-making because representatives can construct a common will from diverse interests in society.

The *democratic* legitimacy of this form of rule rests on citizens' equal footing within the electoral process. Bernard Manin argues that a transformation in the understanding of (democratic) political equality took place, shifting from equal access to office holding (lot) to equal opportunity via the right to vote to consent to officeholders (election) (Manin 1997: 92).[5] Locke's contract theory exemplifies the conceptual structure of this canonical democratic argument. He argued that the state's authority relied upon the consent of the people, thus introducing the notion of consent as criterion of legitimacy. Following this logic, the election of a parliament came to be deemed an expression of citizens' consent to their common government (Stedman Jones 1994: 170). The democratic constitution should ensure citizens' equality within electoral will-formation through the equal attribution of voting rights, namely 'one (wo)man, one vote'. The system was not without its weaknesses; other forms of participation challenged the democratic legitimacy of the state because they would endanger the civic equality required in will-formation process. Some theorists therefore argue against non-electoral participation, such as petitioning one's delegate (Martin 2005: 379).[6] Therefore, Jason Frank argues that the American constitutional framework was aimed at delegitimating other forms of participation so as to stabilize the

modern enlarged polity (Frank 2013). European theorists articulated a similar objection to popular participation. Edmund Burke famously objected to instruction from his constituents (Burke 1908 [1774]). This argument on elections clarifies the importance of the equality of citizens for justify state democratic legitimacy; the equal footing of citizens in the election of representatives ensures the democratic legitimacy of state decisions. This argument posits a procedural equality between citizens whilst also recognizing the substantive diversity of views within the polity.

The interpretation of the nature of diversity in the legislature would shift from regional interests to functional associational groups. Prominent arguments on state legitimacy, moreover, indicate a more positive appraisal of pluralism. James Madison's argument on the legitimate modern republic exemplifies a regional, rather negative account of diversity. Drawing upon Montesquieu rather than Rousseau (Albertone 2009: 133; Manin 1994: 27), he argued that social homogeneity is necessary to avoid the diseases of republican government (Hamilton, Madison et al. 1987 [1788]: 123). He feared that factional government would result in violent civil war (Hamilton, Madison et al. 1987 [1788]: 123). Civic peace was deemed to be a 'vital interest' of citizens, though the size of the modern republic made social homogeneity an unrealistic assumption. Madison's solutions to counter the effects of social pluralism were institutional. He deemed government by a natural aristocracy necessary in the pursuit of the permanent and aggregate interests of the people. Elections on a large-scale would ensure this objective without having to introduce explicit restraints, such as a minimum income for representatives (Manin 1997: 127-128). A rationalist account of knowledge informs Madison's argument; as Jason Frank observes, he believed that ordinary citizens lack the necessary knowledge for modern statecraft (Frank 2013). Madison believed that the natural aristocracy would overcome these regional biases in favour of the common good. Madison's Anti-Federalist opposition, by contrast, argued for mimetic representation in the legislature,[7] but it nonetheless believed that the kind of knowledge required for good government was local-contextual knowledge (Frank 2013). Both Madison and the Anti-Federalists thus grasped representatives in the legislature as advocates of regional interests.

Later arguments in favour of representative government would rely on analyses of pluralism, which represent functional-associative cleavages rather than just regional ones. An early example is Hegel's argument on representative government. He argued that the Estates (*Stände*) represent interdependent factional-functional interests within civil society (Hegel 1991 [1820]: 339). He explicitly rejected the aggregate interpretation of the people, which he equates to a mob acting against the organic state (Hegel 1991 [1820]: 342). Leaving aside Hegel's aristocratic vision of the legislature, his account of the popularly elected Estates reveals an associational conceptualisation of the people. To quote him at some length,

> This second section of the Estates encompasses the *changing* element in *civil* society, which can play its part only by means of *deputies*; the external reason for this is the sheer number of its members, but the essential reason lies in the nature of its determination and activity. In so far as these deputies are elected by civil society, it is immediately evident that, in electing them, society acts *as what it is*. That is, it is not split up into individual atomic units which are merely assembled for a moment to perform a single temporary act and have not further cohesion; on the contrary, it is articulated into its associations, communities, and corporations which although they are already in being, acquire in this way a political connotation (Hegel 1991 [1820]: 346-347).

What the above extract emphasises is that society consists of groups rather than individuals. Citizens became aware of the associational structure of organic society in the electoral moment. Elections thus function to create awareness of plurality within the polity, which he deemed a positive development. The delegates of these associational interests should deliberate and decide upon the common good, with the result that associational interests would transform into a universal or common good (Hegel 1991 [1820]: 348). As we saw earlier in his argument on bureaucracy, Hegel did attribute a place to the technical knowledge of statecraft in his overall theory (Hegel 1991 [1820]: 350-351). He even argued that a constitutional monarch must educate its citizen-subjects after the legislative decision (Hegel 1991 [1820]: 352-358).

This observation places him in the German tradition in which the people require preparation for their liberty (Stedman Jones 1994: 171). Though one might also argue that this process also enables citizens to identify with the common good the legislature constructed, and which combines their diverse interests. The important point is that legislative representatives transform associative-interests into a decision for the common good. Hegel's argument relies on the existence of associational interests, this diversity is a constitutive part of society rather than a threat to its stability. On this account, the *demos* affirms the plurality of the people in elections, but the legislative representatives play a pivotal role in the formulation of the common good. The democratic procedures perform a dual-function as a bond of collectivity between citizens.

In the nineteenth century, as already argued, 'an equality area' arose in modern European democracies. The twin processes of industrialization and the expansion of suffrage impacted the social-economic structure of European democracies. The arguments in favour of representation would shift legitimation from the dispassionate competence-oriented decision-making echoing through in both Madison and Hegel, to an understanding of democratic procedures as taming and funnelling unavoidable societal conflicts in a pluralist society. The vital interest of civil peace would bind citizens together, though disagreement on how to achieve this aim, and other topics of public concern, was recognised as unavoidable. National parliaments should, so it was argued, function as a site of negotiation between antagonistic groups within the national political-economy (Manin 1997: 186-187; Sartori 1976: 16-17). In European countries, the parliamentary multi-*party* system would become the dominant form of representative democracy (Dalton 2006: 127). British parliamentarians were among the first to understand parties as constructive elements of the greater whole, rather than divisive factions subverting the common good. Following to some extent Viscount Henry St. John Bolingbroke (1738: 95-96) and David Hume (1987 [1752]: I.VIII; §2), Edmund Burke distinguished factions as being collectives of a very different kind to parties (Sartori 1976: 12-13). He argued that, "[a] party is a body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed" (Burke 1993 [1770]:

187). The principle indicates the importance of an ideological dimension to parties. Burke argued elsewhere "That general opinion is the vehicle and organ of legislative omnipotence" (1908 [1777]: 217), hence ascribing to popular sovereignty of the people. The multitude did therefore contain the right sentiment, a characteristic which parliamentary representatives needed to rationalise. Despite this hypothetical elitist account of popular sovereignty (Chambers 2004: 155), Burke's parties indicate a legitimate place for diversity between elites in the legislature with different ideological commitments. Yet as Giovanni Sartori puts it rather bluntly: "Parties did not become respectable because Burke declared them as such" (1976: 13).[8] In the current context they have lose their pejorative factional connotation as vehicle for group interests, tools for overcome the mass of irreconcilable positions which epitomise contemporary societies (Glencross 2011: 351).

According to contemporary democratic arguments, *Parteiendemokratie* – party democracy – is the legitimate type of democratic government (Manin 1997: 195; 206-218), as exemplified in Hans Kelsen's political thought. He argued that 'the people' is a necessary unity for democracy because it is the ruling subject. "The unity that appears under the name 'people' creates the greatest problems for a study of reality. Split by national, religious, and economic conflicts, that unity is -- according to sociological findings -- more a bundle of groups than a coherent mass" (Kelsen 2000 [1929]: 89-90). From this Kelsen asserts that individuals remain free in the electoral process as long as they can freely express their preferences on an equal footing. Political parties are essential in modern democracies, because individuals are unable to be of any consequence in modern politics. Parties "*unite* the likeminded to ensure their influence in shaping public affairs. ... an essential aspect of the formation of the will of the community takes place within them (Kelsen 2000 [1929]: 92; Italics in original). Parties are not merely a representation of diversity since they also shape that diversity in opinion. They propose a plurality of accounts of the common good with which individuals can align themselves. Subsequently, the elected representatives of the parties should transform these associational opinions into a common will to guide state decision-making within parliament. Kelsen's democratic argument combines the individual equality of citizens in the electoral processes with the

engagement of political parties in will-formation process. This democratically constructed will should guide legitimate state rule.

> Parliamentarism is *formation of the governing will of the state according to the majority principle through a collegial or ganelected by the people on the basis of a universal and equal right to take part in the full electoral process—that is, democratically* (Kelsen 2000 [1929]: 96; Italics in original).

Thus, a democratically legitimate state transforms individual votes into associative groups to govern in the name of the common good. Majoritarianism, however, can result in continuous domination, which constitutes a threat to both individual liberty and the tranquillity of the nation. On Kelsen's logic, the vote replaced the bullet within nationally-bound '(class) war', but if the vote were to no longer be a means to be heard then the bullet would once again be the only option.[9] Unlike the social precondition of civicity (Bellamy and Castiglione 2013: 213), Kelsen does not posit any cross-cutting social cleavages.[10] Compromise is therefore of vital importance for the functioning of *Parteiendemokratie* (Kelsen 2000 [1929]: 102). Compromise and bargaining between parties secures the stability of the nation because it avoids one group becoming the persistent loser without any recourse other than revolt to protect its (vital) interests (Kelsen 2000 [1929]: 102-104). The capacity to avoid civil war and reach common decisions ultimately comes to the democratic party system. In this paradigmatic argument on electoral party democracy, the people as *demos*, while consisting of antagonistic associational groups, are bound together through a representative electoral system which serves to reach common decisions peacefully.

From early modernity onwards, arguments in favour of representative electoral democracy accepted pluralism as the political reality of modern enlarged polities. A democratically legitimate state was to secure the equality of citizens in the electoral process, and protect their basic rights from illegitimate state interference. In the electoral process, citizens elect their representatives in the state legislature, who enable them to discharge themselves of their right of self-governance (Kalyvas 2005). Representatives should then transform the diverse points of view they stand for through

rationalisation or bargaining into a single will or, more accurately, a decision. The democratic constitution and election of representatives complement one another in legitimating the modern sovereign state as democratic. The former ensures liberty and equality through the attribution of right-based citizenship. The latter enables participation of a diverse citizenry in its self-governance. This democratic procedure creates a bond between a pluralistic citizenry. In the literature defending the creation of pan-European electoral institutions, theorists often posit the expectation that a common bond will arise from this democratic process (e.g. Føllesdal and Hix 2006). Other EU-scholars argue in favour of more deliberative forms of interest representation to attain democratic legitimacy in Europe's novel political order (e.g. Besson 2006; Eriksen and Fossum 2002). In yet other canonical arguments on the state's democratic legitimacy, this deliberation in the public sphere became deemed another essential institution of modern mass democracies, which we will turn to next.

IV - Deliberation in a public sphere

The third institution, which features prominently in paradigmatic arguments on the modern sovereign state's democratic legitimacy, is the public sphere. Historically, in addition to voting rights, free deliberation became the second pillar of modern democratic citizenship (Gripsrud, Moe et al. 2006: xiii). Because citizens were now to publically deliberate on matters of common concern, deliberation became a moral requirement of political legitimacy (Peter 2008: 62). The public sphere, on the other hand, provided the forum for contestation amongst civil society. In contemporary political thought, canonical democratic arguments stress that associational groups have an interest in the opportunity to criticise and oppose the state if it threatens their interests. A public sphere offers citizens with a continuous arena from which to influence government actions; citizens thus remain relevant political agents between elections. In this process they can keep state decision-makers to account, whilst representatives can track the opinion of their electorate. What results is the responsibility of the constitutional state to safeguard the liberty and equality of citizens, *and* empower participants. In this manner,

constitution, representation, and deliberation remain intertwined in various ways. This emphasis on democratic institutions thus posits procedural democratic bonds between a pluralistic citizenry as source of legitimacy for political rule. To anticipate the next chapter, these arguments on the public sphere implicitly rely on certain sociological preconditions to attain meaningful democratic will-formation in mass societies. A functioning public sphere seems rather elusive without a shared language and, arguably, a meaningful understanding of the political context (e.g. Bellamy and Castiglione 2013: 213; Fossum 2005). Let us first examine the importance of deliberation in the public sphere for the democratic legitimacy of the modern state.

According to canonical arguments, the public sphere offers a forum for citizens to deliberate on matters of public concern. Early modern positions were concerned with the formation of a rational will to guide the public law, as exemplified by one of the most influential defenders of the public sphere, Immanuel Kant (e.g. Habermas 1992a). In his *An Answer to the Question: What is Enlightenment?* (1991 [1784]), Kant argued that the public sphere should remain separate from both state interference and private concerns. The public sphere should offer an open forum in which citizens would publicly and freely debate political matters, cumulating in the formation of a rational opinion. Kant deemed both the public and social nature of deliberation to be preconditions to reaching a rational agreement, which should then inform public law. Public laws should only be established through public agreement because legislators should not impose upon the people what they would not impose upon themselves. The universality of rationality guarantees a consensus (Kant 1991 [1784]). Kant's argument exemplifies the importance attributed to public deliberation to attain a shared conception of the common good. His argument does not require the participation of the population but rather that the learned few determine the public good.[11] Nevertheless, his argument adheres to a conceptual structure informing later democratic arguments on the public sphere: free public deliberation should produce a conception of the common good able to influence state decision-makers.

The contemporary democratic argument stresses the importance of the participation of the masses in public debates. In the French constitutional debates, Marquis Nicolas de Condorcet offered an early defence of a mass

participatory form of deliberative democracy (Urbinati 2006: 176-222). His argument foreshadowed the democratic arguments of Dewey and Habermas (Lukes and Urbinati 2012: xxv). Underpinning Condorcet's argument lies a conception of rationality as relying on probability and statistics (Lukes and Urbinati 2012: xxv). The probability of correct knowledge increases with the greater number of participants in deliberation. He consequently favoured extensive public deliberation taking place in formal and informal public fora. Condorcet argued that the attainment of knowledge is an indefinite praxis due to the limits on human capacity (Condorcet 2012 [1795]: 146). It follows that no one can establish the best decision with full certainty. Furthermore, and in stark contrast to Kant[12], he argued that the citizenry should survey their government's actions and be given the legal means to contest decisions (Urbinati 2006: 177). A public sphere is crucial to arriving at the best decision for the public good due to the increased probability of attaining knowledge. A legitimate state should therefore not only enable public deliberation but also empower the public opinion. On this account, public deliberation should act as a source of criticism, continuously holding the state to account. It is, thus, not only meant to inform the state on the best decision, but also empower citizens should they need to oppose, and possibly overturn state decisions. Democratic legitimacy depends upon democratic processes of public deliberation.

The free press would become one of the most prominent forums of the deliberative public sphere. *Print* media arose in Western democracies in the 18th century.[13] In these early days it tended to articulate 'rational' elite opinions. A commercial basis secured the media's independence from state interests, and it avoided capture by private interests (Martin 2005: 53). An assumption of continued contestation between different conceptions of the common good would replace the assumed possibility of a unified opinion, which, in later arguments, would come to constitute the public sphere as a space for the popular sovereign to express its diversity opinions. Theorists in the early American republic, for instance, argued that multiple *public* debates should inform and enlighten general opinion. These arguments conceptualised the people as a set of diverse publics constituting the popular sovereign (Martin 2005: 375-386); This is reflected in Thomas Jefferson's

work, which posited that the will of the people arises from a process of continuous deliberation, implying it remains in a constant state of flux (Helo 2009: 39-42). The public sphere can only emerge here as the rightful place for the formation of the will of the popular sovereign. In the aftermath of the Chartist movement in Britain and the February revolution in Russia, the readership of newspapers would expend to include more groups in the public sphere than just the bourgeoisie. The extension of the right to vote also served to place new topics on the legislative agenda, with new laws being enacted under the "pressure of the street" (Habermas 1992a: 131-132). European liberals became 'ambivalent' toward public opinion expressed in the public sphere. Despite their rationalist tendencies, their arguments would become canonical defences of the public sphere within democratic societies.

The liberals advanced the notion that the public sphere became a check upon state power rather than necessary for processes of will-formation. A commitment to popular sovereignty became combined with scepticism of the influence of uneducated masses on politics. Alexis De Tocqueville's proposal for an enlightened public opinion exemplifies this duality (Tocqueville 1998 [1848]: 343-346). He argued that a group of individuals from different functional backgrounds should be educated and properly informed. They should *then* critically deliberate to create a shared position on the common good which, in virtue of it being the Enlightened opinion of the people, must be acted upon by state institutions (Habermas 1992a: 136-137). This intermediate body should function as an important check on increasingly centralized bureaucratic apparatuses. De Tocqueville associated this centralisation with the rise of socialism, which constituted a threat to the liberty of the individual (Tocqueville 1998 [1848]: 347-361). An Enlightened public opinion built from diverse interests should thus act as a check on the state. J.S. Mill offers the paragon expression of the liberal legitimation of state rule through a free public sphere. His work *On Liberty* (1991 [1859]) argues that society could effectively tyrannise the individual through the social pressure to conform. On the one hand, the majority opinion expressed in public debate should act as a power in the system of checks and balances rather than conferring this role to the sovereign will. Parliamentary representatives should take it into account, but also oppose popular opinion

when it threatens individual liberty and progress. Representative democracy would thus become a solution to mediocre public opinion formation (Habermas 1992a: 135-136). On the other hand, the freedom of expression should safeguard minority opinion; the latter should be protected by the legitimate modern state because they can contribute to overall the progress of society (Mill 1991 [1859]: 19-55). Despite Mill's penchant for binding citizens through a shared interest in progress, his argument became a canonical argument on justifying the democratic legitimacy of the modern state through its protection of a citizen's equal and free position in the public sphere.

In more contemporary accounts, free deliberation gained an essential place in democratic society, more broadly construed. The rise of methods of mass communication in the twentieth century, such as the radio and telephone, turned extensive public deliberation in modernity's enlarged polities into a reality. John Dewey's argument in *The Public and its Problems (1954 [1927])* exemplifies the canonical defence of public deliberation as a precondition to the state's democratic legitimacy. It additionally draws to the fore more sociological requirements for democratic will-formation. Dewey argued that the lack of a self-aware public with agency was a political problem for modern democracies, stating that "Communication can alone create a great community. Our Babel is not one of language but of signs and symbols without which shared experience is impossible" (Dewey 1954 [1927]: 181). In this context Dewey is referring to the United States, though the analysis is nonetheless relevant for grasping the creation of a *demos* in mass societies. He starts from the observation that all humans organise themselves in associations, though these relations do not yet constitute a democratic society (Dewey 1954 [1927]: 188). For a democratic society to emerge, the people requires a self-conception which offers common purpose to an essentially pluralistic citizenry. The value of public deliberation lies in the ability to create this self-understanding among citizens. Dewey's argument exemplifies the importance of public communication in creating unity from plurality. It posits that the existence of majority opinion is less important than how the majority constituted itself from a plurality of opinions (Dewey 1954 [1927]: 207-208). This emphasis on process stresses how elections should motivate citizens to debate public matters on an equal footing. Citizens might not always influence

decision-makers, but they should feel agency in political matters. The public sphere comes to hold, through this line of reasoning, a vital position in modern mass democracies because it is here that the *demos* attains a sense of political agency. This canonical argument posits a pluralistic conception of the people but additionally emphasises the importance of citizens' participation in the construction of a common majoritarian opinion for democratic politics. The legitimacy of the democratic relies on the existence of such a deliberative space because the political agency of the constituent power takes shape within it. To put it more concisely, democratic legitimacy relies on citizens' participation in deliberation on matters of public concern, which creates a procedural bond of collectivity.

An additional dimension which affects the importance of the public sphere in legitimating state rule, and which contemporary arguments tend to emphasise, is the presence of more distinct and antagonistic groups in European societies. This logic finds its expression in the work of Jürgen Habermas, who argues that state decision-making should remain responsive to the will of the *demos*. The democratic legitimacy of state decision-makers relies on the possibility of continuous influence by its popular sovereign through both formal and informal channels. Habermas argues that communicative acts constitute opinion and will-formation processes; "Subjectless forms of communication' arise in a 'network of fairly regulated bargaining processes and of various forms of argumentation" (Habermas 1994: 8; 6). These processes include diverse modes of discourse, ranging from instrumental bargaining to ethical debates. In this context, the public sphere constitutes a set of arenas in which a more-or-less rational formation of popular opinion and will takes place. Here, the *presumption* of rationality derives from the diversity of opinions expressed in public debate[14], whilst the practical issue requiring action shapes its normative content (Habermas 1994: 6). The public nature of deliberation should exclude unjustifiable, that is non-democratic, arguments. Habermas argues that a pluralistic *demos* creates shared standards of debate. In other words, the democratic citizenry establishes democratic procedural norms to which they are at least instrumentally committed. The latter remain open to legitimate changes through public deliberation. He explicitly posits a procedural understanding of

the *demos*, which derives from citizens' participation in normatively regulated deliberative processes.

According to this argument, the democratic legitimacy of the state relies on the existence of an empowered public sphere. Habermas argues, *contra* Kant, that public opinion should influence state legislation, hence retaining popular sovereignty as a central principle in his theory (e.g. Cronin 2003; Habermas 1996). Representatives in a democratically legitimate state must, as a result, be pressured to remain responsive to public opinion because they depend on the popular vote. He describes the process as follows:

> Informal public opinion-formation generates "influence"; influence is transformed into "communicative power" through channels of political elections; and communicative power is again transformed into "administrative power" through legislation (Habermas 1994: 8).

Habermas argues, like Condorcet, that processes of opinion-formation should "hold their own" against the widespread administrative power of the modern state. (Habermas 1994: 8). The legal apparatus of the constitutional state, for instance, should ensure the contestability of decisions within judicial arenas. Critical subjectless discourses, on the other hand, should ensure that citizens effectively govern themselves through their influence on modern state apparatuses. The *demos* should constructively engage in the creation of will-formation processes, but first of all require a public sphere in which to engage productively in the creation of public will. The state must therefore ensure the preconditions for democratic public deliberation. In both Dewey's and Habermas' arguments, the electoral system is necessarily embedded in a public sphere. The latter has arguably grown in importance due to deep pluralism in multicultural societies (Bohman 2003), and therefore greater need for accommodation, within contemporary Western polities.

These canonical arguments on the democratic legitimacy of the state rely on the constitutional formation of an equal and free citizenry. Habermas defines the *demos* as consisting of diverse voluntary groups that choose to participate in the public sphere, in public processes of will-formation, and that

they “find a basis in the associations of a civil society quite distinct from both state and economy alike” (Habermas 1994: 10). Some go so far as to say that the recognition of diversity act as a catalyst in getting the public to participate (Maynor 2003: 205). The contestation between groups should foster a dynamic energy marked by a republican thrust aimed at ensuring equal participation in decision-making. These contemporary republicans (Kalyvas and Katznelson 2008: 82), as well as theorists of pan-European party democracy (Føllesdal and Hix 2006: 549-551), argue that conflict has a constructive, energising dimension.[15] These positions imply that partisan conflict within the *demos* generates participation in democratic processes of will-formation, the focus is on creating a *demos* through democratic procedures (Abizadeh 2010; Benhabib 2006; Loughlin 2014; Scherz 2013; Whelan 1983). As Chantal Mouffe skilfully demonstrates however, some degree of consensus is necessary even before agonistic democracy is possible in pluralistic societies (Mouffe 1999: 756). What the procedural focus highlights is that a constitution, which enshrines basic rights and the separation of powers, is not, on its own, protection from a factional, oppressive state. The status of citizenship empowers a diverse popular sovereign to discharge its rights to self-government through democratic procedures of will-formation. Citizenship within a democratic state should create a bond of collectivity between diverse publics. As Hannah Arendt thus argued, together, men create a common world completely dependent upon “the sharing of words and deeds” (Arendt 1998 [1958]: 198). The canonical arguments presented in this section posit an image of the people as a *demos* bound together through democratic procedures of will-formation, rather than relying on any form of pre-existing bond. In the late-capitalist West, deep pluralism, in the form of religious communities and other irreconcilable value communities (Bohman 2003), make the construction of a common will an elusive endeavour. Still, this procedural bond is consequently a particularly attractive notion in modern circumstances of socially plural, enlarged polities.

V - The diverse *demos* self-governing through democratic state institutions

Democracy is the appropriate criterion of legitimacy for the modern state, because this form of rule ensures peaceful decision-making in pluralist contexts. The democratic constitution, the election of representatives, and a public sphere should ensure peaceful self-government of the sovereign *demos*. These canonical arguments combine two intertwined criteria of democratic legitimacy: popular and procedural in nature. First, popular legitimacy relies on the possibility of participating in state decision-making, or to at least meaningfully influence state decisions. The *demos* have to be the author of their laws, to borrow Rousseau's famous phrase. As unanimity is deemed impossible in enlarged polities, state decisions reflect a majoritarian position or compromise. It therefore follows that an empowered public sphere should, in part, continue to act as a critical observer of state decisions. Public deliberation should at least transform a diversity of positions into a majoritarian one. The public sphere is also important for protecting unrepresented minority beliefs in legislative processes. Secondly, procedural legitimacy is attained if citizens, or their representatives, can democratically influence the state's decision-making centre. The state should ensure citizens' freedom and equality within these will-formation processes. This requires, on the one hand, that the legitimate democratic state enable free and equal participation in collective will-formation processes. On the other hand, it should ensure freedom from state domination or the tyranny of majorities over minorities. The democratic state is illegitimate if parts of the sovereign *demos* are either systematically excluded from or privileged in participating in will-formation processes; democratic procedures should therefore legitimate the modern state. The two sources are clearly intertwined because democratic procedures should enable participation, whilst the legitimating force of these procedures derives from their ability to enable citizens to participate in their self-government.

The democratic conception posits citizens as bound together by the democratic procedures, which enable their self-government. The state cannot assume any shared objective interests between citizens in any meaningful way. Competent government is consequently a meaningless criterion for

evaluating state legitimacy, because there is no objective norm against which to measure its rule. Democratic procedures aim to maintain the vital interest of civil peace in modern pluralistic polities. Public will-formation processes should nevertheless result in a conception of the common good, which the state can, and should, pursue. Representation has become important in mass polities, whether in electoral, deliberative or participatory processes. Early modern arguments, as elaborated above, conceive of representatives as creating a common good from regional interests. Later theories, on the other hand, tend to rest on an associational conceptualisation that includes regional interests, but tends to focus on socio-economic and other cleavages, the irreconcilability of which results in greater emphasis on democratic procedures. Any decision made by the state legislature will privilege some interests and values over others; citizens should therefore participate as equal citizens in these processes because they constitute part the sovereign. It is by this logic that participation in democratic procedures creates a procedural unity between citizens. Citizens are bound together by the desirability of partaking in peaceful, democratic procedures, despite holding substantive disagreements as to what exactly should result from this association. The democratic procedure of self-government thus constitutes the people's bond of collectivity. The conceptual structure of popular sovereignty coalesces around the notion that the constituent power should continue to at least influence its constituted power. What this means is that, democratic institutions are essential to the state's legitimacy, because they enable the constituent power to continuously influence the constituted power. This democratic conception of popular sovereignty clearly governs the reasoning behind a wide array of democratic and republican proposals, which advocate greater participation of citizens in EU decision-making structures.

The conceptual boundary of the people derives from the constitutional state, because only citizens are equally empowered to act as the sovereign within its democratic institutions. These canonical arguments share a commitment to participation in democratic procedures, that is, to the democratic criterion of inclusion. This logic aligns with the conception of the sovereign as beneficiary in that it does not provide an inherent criterion of exclusion from the people due to the universality of its principles. A Lockean-

Kantian universalist legacy arguably continues to resonate in contemporary democratic thought. As such, closure constitutes a persistent and ever more salient challenge for the democratic criterion of legitimacy; the democratic paradox (Espejo 2013; Whelan 1983). In other words, the universalist principles of democracy do not offer a coherent justification of the original borders of the *demos* (e.g. Abizadeh 2008; 2012). The foundational moment creates 'the people', yet paradoxically the creation seems to presuppose a people. The effect would thus have to become the cause (Rousseau 1987 [1762]: 164). The borders of the *demos* cannot be delineated democratically because the democratic principle offers no evaluation criterion as to who may partake in the foundational democratic process. As Ben Saunders points out: "Historically, democracy was an inclusive ideal, […] but the political unit in question was always taken as a given" (2012: 282). The given of the political unity -- the sovereign state -- is essential in setting borders to the people in these arguments. Thus, conceptually, the territorial state determines the boundaries of the pluralistic *demos*, because its decision-making centre is the object of democratisation through citizen empowerment. The democratic constitution, electoral system, and public sphere complement one another to institutionally enable self-government of modern enlarged and diverse mass polities. According to the canonical arguments, democratic procedures which enable self-government, as part of the modern state and protected by it, bind the people as *demos* despite internal pluralism. The *demos* derives its conceptual borders from the state since the latter offers the institutional framework in which the people can participate autonomously in its sovereign self-government.

VI - Conclusion

This chapter offered a genealogical reconstruction of the contemporary conception of popular sovereignty as expounded in arguments on the EU's democratic legitimacy. This reconstruction was essential to the project because the distinct conception offered here continues to inform the debate on the EU's democratic deficit. These legitimations posit the people as a *demos*, which self-governs through democratic procedures. Despite the lack

of a pre-existing consensus, vital interests require collective decisions in order to avoid regressing into armed conflict. It becomes the role of the state to act as the vessel through which the *demos* can discharge its sovereign rule in a meaningful way. Popular sovereignty comes to be conceptualised as the democratic self-government of citizens through the sovereign state decision-making institutions. Democratic will-formation processes should offer citizens the opportunity to participate as equals, albeit often as part of a group and through representatives; it is indeed this element, which grounds the democratic legitimacy of the state. This (constitutional) equality in procedures constitutes the relevant relationship between the ruled. So despite the initial assumption of diversity, this democratic conception posits a unity among the citizenry. The borders to the *demos*, however, are set by the territorially sovereign state rather than by a principle inherent to the conceptual relationship between the ruled. In practice, the democratic constitution of a state delineates 'we, the people' through the ascription of citizenship rights, which ensure equal footing in democratic procedures. A democratic constitution, representative electoral system and public sphere create an institutional framework of self-government around the state's decision-making centre. In these arguments, thus, the state implicitly sets boundaries to a particular *demos* rather than the bond of collectivity. In summary, this democratic conception of popular sovereignty stresses the importance of participation in coming to common decisions. This understanding has taken hold of the modern popular imagination in the West (Chambers 2004; Kalyvas 2005), and arguably informs analyses of the EU's *democratic* deficit. The procedural democratic relationship, however, offers no criterion for exclusion beyond implicit sociological constraints on a functioning public sphere. In this regard, the arguments effectively rely upon the existing territorially organised state for the conceptual closure of the *demos.* The final genealogy will reconstruct an identitarian conception of popular sovereignty that does provide such borders independently of the state, at least at a conceptual level.

Endnotes

[1] Thomas Jefferson, by contrast, argued that natural rights are safe under majoritarian rule (Helo 2009: 37).

[2] On the *Trias Politica*, see (Montesquieu 1949 [1748]: 151-162).

[3] On his own account, Rousseau's political theory of republican government might legitimate modern city-states, like his hometown of Geneva, or smaller countries, such as Corsica (Rousseau 1987 [1762]: 170) and Poland (Rousseau 1782).

[4] Some theorists argued that this procedure could challenge individual liberty through interest aggregation, such as Hans Kelsen (2000 [1929]: 94-95).

[5] See also Montesquieu's *Spirit of the Laws* (1949 [1748]: 11).

[6] Other practices of participation were also pursued historically (Morgan 1988: 209-230).

[7] Brutus, for example, argues that, "The very term, representative implies that the person or body chosen for this purpose, should resemble those who appoint them—a representation of the people of America, if it be a true one must be like the people. It ought to be so constituted that a person who is a stranger to the country, might be able to form a just idea of their character, by knowing that of their representatives. They are the sign—the people are the thing signified" (Brutus 1993 [1787]: 320).

[8] It is important to note, firstly, that Burke probably did have in mind something more analogue to his American counterparts than to contemporary European parties. Secondly, Burke was an *exception*, an important and influential thinker in the Western canon, yet his view on parties made him stand out in the intellectual landscape of his time (Manin 1997: 194; fn 191).

[9] American minimalists often appeal to a similar rationale. The Madisonian concern with domination as a threat to the republic, however, is absent, see (Lippmann 1930: 54-62).

[10] On the relationship between parties and particular cleavages, see (Rokkan 1999: 276-340).

[11] In his practical political theory, Kant argues that a constitutional monarch should prepare citizens for liberty, which follows coherently from his (not so democratic) rationalist underpinnings. The aim is nevertheless to prepare citizens for democratic self-government (Kant 1991 [1793]). As with Hegel, the educational dimension indicates the transformative possibility of citizens' opinion. He further aligns with Hegel in that he does not defend a mass participatory form of deliberative democracy relying on a pluralistic understanding of the people. His position on popular sovereignty relies, rather, on a fictional or hypothetical understanding of the people (Chambers 2004: 154; Urbinati 2006: 101-137).

[12] As Kant puts it in 'What is Enlightenment?', "*Argue as much as you like and about whatever you like, but obey!"*(Kant 1991 [1784]: 59; Italics in original).

[13] For the rise of the modern print media and its impact on the conceptualisation of public deliberation, compare (Habermas 1992b) and (Martin 2005).

[14] Others have argued in a more Kantian vein that "the power of rational deliberation to counter self-interested claims and demagogic appeals, thus underwriting the normative legitimacy of the reasoned agreement that emerges from such dialogue" (Martin 2005: 387).

[15] Kalyvas and Katznelson argue that eighteenth-century Scottish republican theorist Adam Ferguson held the very same beliefs. In the democratic revolutions, however, the emphasis was on reason and interest (Kalyvas and Katznelson 2008: 51-87).

Chapter 5: The People Identifying as a Nation

> We have not willed our nationality … the *patrie* is a *natural society* or, which comes absolutely to the same thing, a *historic* one. Its decisive characteristic is birth. We no more choose our *patrie* – the land of our forefathers – than we choose our father and mother.
>
> Charles Maurras[1]

I - Introduction

The preceding chapter reconstructed the democratic conception of popular sovereignty, which informs the corresponding criterion of political legitimacy. The pluralistic citizenry is understood here as constituting its politically relevant relationship in the democratic procedures through which it influences state decision-makers. The democratic constitution, electoral process, and public sphere create the institutional circumstances, which enable the sovereign's self-government. The democratic principle behind this conception of popular sovereignty does not offer a criterion to exclude individuals from the *demos*. The state's ascription of citizenship, which protects and empowers the ruled to participate in the democratic life of their polity, is what sets boundaries to the *demos*. This conceptual border results from the pre-existing sovereign state being the object of democratisation. The conceptual reconstruction in the previous chapter was essential as this democratic conception influences much of the debate on the EU's *democratic* deficit, however the no-*demos* thesis, often invoked in relation this deficit, is arguably more about identity than democracy (e.g. Friese and Wagner 2002; Weiler 1995). The third genealogy reconstructs the contemporary conception of popular sovereignty underlying these identitarian arguments. This conception, so I shall argue, relies on the positing of a shared communitarian identity. The legitimate sovereign state's borders should coincide with those of the nation, which, in turn, changes the criteria of legitimacy from democracy into a shared identity. The cultural particularity of this identity constitutes a normative boundary to the people, the criterion of inclusion, therefore, also acts as a

criterion for exclusion and closure. This conceptual structure relies upon this exclusiveness in its legitimation of political rule.

This final conceptual genealogy reconstructs the conception of popular sovereignty, which underlies the criterion of identity. This chapter is vital to this thesis, alongside chapters 3 and 4, because this conception governs the diverse arguments in the EU-debate, which invoke cultural identities, whether at the national or European level. Historically, these arguments emphasise the importance of a national identity for the legitimacy of the modern state. I shall therefore refer to these arguments as nationalistic since they posit the nation as necessity. Some argue that one should distinguish between nationality and nationhood, however the practice of justification is insensitive to this distinction in making sense of legitimacy. The distinction, moreover, is often dismissed as cosmetic or rhetorical in academic arguments.[2] One can observe a historical shift in emphasis from the ideological-ethnic toward the more functional-civic; compare, for instance, Fichte and Mill. These two canonical theorists nevertheless agree that the legitimate state requires that its citizens' identify as nation, thus belonging to a particular state. The people as nation share cultural membership in a political community, which is grounded in an associative identity. Later arguments recognise that processes of socialisation, rather than shared socio-cultural markers, are necessary to maintain and shape this communitarian identity. The nationalist argument posits a shared understanding of the common good -- a national will -- which should guide the constituted power: the sovereign state. The legitimate nation-state empowers the national will in the realm of politics. On this identitarian conception of popular sovereignty, popular self-government reflects a communitarian right to self-determination. An essential criterion for state legitimacy, therefore, is the congruence between the borders of the national identity and the state. Contemporary democratic arguments emphasise that the presence of a national identity is a precondition for a well-functioning mass democracy and welfare state. Nevertheless, these arguments support the congruence of identity and state without an explicitly ideological nationalist agenda, and its associated fervent sentiments. Conceptualising the people as a nation with a communitarian identity in this

manner provides a form of closure to the polity based upon the cultural distinctiveness of the citizenry.

The rest of the chapter unfolds in five sections. In a different vein to the two previous genealogies, each section reconstructs a part of the paradigmatic nationalistic argument, which is governed by identitarian conception of popular sovereignty. The first reconstruction (section II) focuses on how the nation is conceptualised in modern political thought. Early conceptualisations of the nation as a factual 'ethnic' and 'civic' nation were replaced by an emphasis on its self-identification as a community. The recognition of a shared identity nonetheless remained a central dimension throughout these conceptualisations of the relevant bond of collectivity. The following section (section III) shifts toward the political relevance of this communitarian identity in legitimating the modern state. In short, the particularity of the national will justifies the organisation of the world into nation-states. The sovereign state's legitimacy relies, on the one hand, on the protection of the national community and, on the other hand, on its responsiveness to the national will. For both these functions, the state borders have to coincide with those of the nation. The next section (section IV) explores the importance of communitarian identities, mainly in liberal and democratic justifications, because they occupy a central position in the contemporary conception of identitarian popular sovereignty. This more sociological perspective focuses on the canonical arguments that deem nationhood to be essential for a legitimate modern state. These might be less ideological, but they nevertheless posit a communitarian identity as a precondition of mass democracy and welfare redistribution. In the final section (section V), I reconstruct the contemporary understanding of this conception governing the identitarian arguments in the EU's legitimacy debate. It will demonstrate how popular sovereignty is understood as the discharging of a nation's right to self-determination by their sovereign nation-state. Sociological arguments, on the other hand, emphasise the functional purposes of a communitarian identity. In both cases, the existence of a national identity is the source of legitimacy for the modern state. This conception of popular sovereignty rests on the positing of a cultural bond of collectivity, which limits the people to those socialised into the communitarian identity. In the

conclusion (section VI), I summarise that this identitarian conception of popular sovereignty, which understands the people as a nation.

II - The nation: From brute fact to shared identity

The conceptualisation of the nation has broadly shifted from an understanding the nation as brute fact toward one of shared identity. In contrast to the previous chapters, this chapter will start from a definition rather than drawing it out of arguments on criteria for evaluating state legitimacy. The reason is that these definitions feature explicitly in the canonical arguments. To appreciate these arguments, therefore, it is fruitful to have a clear understanding of their definition of the people as nation. The latter has become associated with Rousseauian republicanism, communitarian, and nationalist political theories (e.g. Bellamy and Castiglione 2013: 213; Habermas 1994: 9; Vincent 2002). These traditions share a conceptualisation of the citizenry as socio-cultural community. The exact definition of the nation remains the object of much contestation. Two variations have become particularly influential in modern political thought: the so-called 'ethnic' and 'civic' nations. The former identifies nationhood with a set of ethnic markers, such as race or religion, whilst the latter is constituted by political markers, such as a shared history or political values (e.g. Canovan 1996; Singer 1996).[3] In both cases, emphasis is implicitly or explicitly on the need for citizens to identify as a community derived from, but not reducible to, facts about their homogeneity. The need to identify as a nation would become more significant in these arguments than any particular markers. The conceptualisation of the people as nation shifts from brute fact toward shared identity informing a sense of belonging.

In early modern political thought, a civic conceptualisation of the nation emerges in which shared values and political enterprises shape the present political institutions and particular ways of life of a society. Edmund Burke's justification of the English constitutional monarchy exemplifies this type of definition of the people as civic nation. He argued that it is historically specific politico-legal institutions which constitute the unity of the polity rather than any *ethnic* components (Burke 2004 [1790]). Burke uses the image of an intergenerational contract to illustrate that the political community constitutes

a historical enterprise greater than its constituent parts (Burke 2004 [1790]: 194-195). In a similar vein, Liah Greenfeld characterizes the American revolution as a Herculean task, because it appeals to common values in order to draw citizens together in a political enterprise (Greenfeld 1992b: 423). For instance, the American Declaration of Independence (1776) appeals to God-given rights.[4] The principle author of the declaration, Thomas Jefferson, used the shared pursuit of Universal values to justify American self-government. His position toward other 'races', however, reveals a more ethnic component to this Universal self-understanding. Michael Mann's chapter, 'Genocidal Democracies in the New World' (2005a), brings to the fore an ethnic dimension in Western liberal democracies, which was indicated by their attitude toward Native Americans, slaves, and Hawaiians.[5] This sentiment did not contain itself to frontier settler communities in direct competition for land with these communities; during his presidential tenure, Thomas Jefferson declared that higher civilizations should rule over lower ones, squarely placing Indians in the second category. As Jefferson put it, "they must be crushed' if they resisted American campaigns to obtain land" (Jefferson quoted in: Mann 2005a: 92-93; see also Morris 2000: 9-10). This declaration reveals an implicit ethnic dimension to this civic, even Universalist definition of the nation.

This intertwinement arguably finds its clearest reflection in the political thought of Jean-Jacques Rousseau. In his foundational argument of the legitimate republic, he conceptualises the people as an ethnic-civic entity. In his *On the Social Contract* (Rousseau 1987 [1762]), Rousseau argued that a legislator creates a constitution to which individuals have to agree voluntarily so as to 'escape' a relatively tranquil state of nature. An act of will transforms a "blind multitude" into a sovereign people (1987 [1762]: 162-170).[6] The *constitution* creates a single political body with a uniform will: the so-called *volonté générale*. The people seem to emerge as a civic entity. His 'blind multitude' constitutes a culturally homogeneous group.[7] Rousseau's conceptualisation of this multitude, however, incorporates a long list of 'demands' in order to be considered suitable for legislation.[8] Civic religion, education, festivals and other 'social' institutions have to further enshrine mores into the hearts of the people after the foundation of the polity (Rousseau 1987 [1762]). On this account, the nation is "a community bound

by spiritual ties and cultural traditions" (Barnard 1983: 250-251). Egalitarian thinkers lament this requirement of sociological unity in his political thought (Douglass 2013: 735-736). It is, however, crucial for Rousseau's argument because it ensures citizens' identification with a unified 'general will'. This conceptualization of the people as nation combines a 'civic' with an 'ethnic' dimension. Rousseau represents, to some extent, a shift from a contractual concept of the people to an organic one (Shell 2003: 49-50).

Modern nationalist arguments in which identity is the criteria of state legitimacy often rely on an ethnic definition of the nation. Prominent markers, such as ethnicity, religion, geography, and language, have often been weaved into theories in which the nation is primordial or divine entity. Giuseppe Mazzini has been one of the most eloquent defenders of modern nationalism (Canovan 1996: 6; Rowley 2012: 39). His definition of a nation draws together all the aforementioned 'material' characteristics. He argued that God divided mankind into natural nations, however modern artificial empires destroyed this natural order (Mazzini 2009 [1814-60]: 93). Membership in a nation is not a voluntary choice but quite literally a God-given fact. Another influential strand of ethnic theorists emphasised the importance of a shared language. Fichte's *Reden an die deutsche Nation* (2008 [1808]) exemplifies this linguistic definition of the nation. He argued that a core characteristic of the German nation was its *Ürsprache*. In his *Reden,* Fichte defined language as an epistemology for understanding the world. He argued that German *Ürsprache* is rooted in God's will. Being part of the German language community is, consequently, not a matter of choice (Abizadeh 2005: 340; Moore 2008: xxiv). In a similar vein, Johan Gottfried Herder defined the nation as a cultural community with its own language (Zammito, Menges et al. 2010). Cultural communities have a shared language required for their self-governance. He thus dismissed the growing international relations culture as mere *'Papierkultur'* (Rothschild 1995: 68), which was not based upon a 'cultural language'. Language reflects the naturally developed cultural character of the nation. On Herder's account, communities can develop and merge through human (divinely inspired) agency; nations, thus, ultimately find their natural roots in divine will (Patten 2010: 685-686). An important point to highlight is that Fichte and Herder's arguments reveal a communitarian dimension to the

fact of sharing a common language with co-nationals. A vernacular language is more than an instrument to communicate with others, it reflects a common 'life world'. Membership of a nation nonetheless remains a brute fact.

More contemporary definitions of the people as nation shifted from social homogeneity as empirical fact to a belief therein. Such a national identity was nevertheless deemed authentic and politically significant. In his *Qu'est-ce qu'une Nation? (1992 [1882])*, Ernest Renan argued that in wanting authentic relationships with one another citizens turn to the past to make sense of themselves in the present. Renan explicitly rejected 'material elements' such as race, language, religion, and geography (1992 [1882]);[9] the nation is a moral consciousness with which citizens identify. Renan's argument incorporates a more psychological understanding of the nation grounded in citizens' felt need to live in an authentic community (see also Williams 2004: 201-205). According to him, the common experience of past suffering was one of the most powerful forces of national unity. Citizens identify with events in which one did not even necessarily partake, an 'imagined' shared experience which imposes duties on the future generations of the nation (Renan 1992 [1882]). This national identity becomes engrained through everyday socialisation processes, which informed Renan's assertion that the nation constitutes a 'daily plebiscite' (Renan 1992 [1882]). Citizens' participation in a national public sphere cultivates a shared culture, which also is as an expression of political unity (Laborde 2004). This national identity generates a sincere feeling of community among citizens.

This communitarian identity remains the cornerstone of the definition, thereby mirroring previous arguments, but the exact definition would become more an object of political engineering. Benedict Anderson's 'imagined community' captures the core of this conceptualisation of the nation as portrayed in contemporary literature. He argued that communities are no longer based on face-to-face interactions, but citizens are nonetheless able to imagine themselves as part of a national community due to their participation in a public sphere (Anderson 2006). Anderson stresses the importance of print media, because it enables citizens to participate in a shared political space without the necessity to interact directly. In a similar vein, Charles Taylor describes the public sphere as "a common space in which the

members of society are deemed to meet through a variety of media: print electronic, and also face-to-face encounters; to discuss matters of common interest; and thus to be able to form a common mind about these" (Taylor 2004: 83). The public sphere is essential to the creation of a national identity: a 'common mind'. The communitarian identity is the creation of 'shared frames' to interpreted the world in the public sphere (Frost 2001; Tamir 1993). Other state institutions also play a formative role in the creation of this identity, such as the military and national education, by creating common experiences shared by citizens' whom need not have met (Anderson 2006; Maynor 2003). The exact definitions of the nation become less central to these arguments, but the existence of a shared identity remains an essential dimension of the people as nation.

The national identity should be a communitarian identity, as Max Weber describes as a *Nationalgefuhl* (Weber 1978: 385), which captures the emotive nature of the national identity. From a philosophical perspective, the difference between ethnic and civic nationalism becomes largely inconsequential. What is important, however, is that citizens should not experience community as a choice, a dimension emphasised by more sociological arguments.[10] Membership in the national community is not a choice (Tamir 1993: 20-22), or at least it is not experienced as such. Having a nationality feels as natural as having one's nose, to paraphrase Ernest Gellner (1983: 6). The lack of (perceived) choice should create the experience of partaking in a community with a shared culture. This emotional identification should result in the feeling of belonging to a national community and to a particular political order. Sharing an identity in this manner should further generate a sense of obligation and allegiance between citizens and the state; "[I]ndividuals assume [associative] obligations because they see the state as *their* state, its laws as *their* laws, and its government as *their* government" (Tamir 1993: 135). These more contemporary arguments thus define the nation as a shared identity which relates citizens to another, and by extension to their political regime, through a sense of community.

III - Popular sovereignty as national self-determination

Both ethnic and civic definitions feature in making sense of the modern state's legitimacy from a nationalist perspective. Max Weber observed that nationalism is the politicization of socio-cultural features which have no inherent political significance. To clarify, he did not argue that the belief in the nation is insincere or does not exist but rather that the nation "directs us to political power" (Weber 1978: 398). To rephrase Weber's observation, the nation became the politically relevant community in determining a state's legitimacy. The arguments presented in this section are closely associated with the political doctrine of nationalism. What they contribute is the understanding that the 'fit' between the national socio-cultural community and the political state is essential for the latter's legitimacy (Walzer 1977) because states should act as political representative of their socio-cultural communities in the realm of politics. In other words, the state's sovereignty is an expression of the nation's right to (cultural) self-determination; "The patriotic national identity […] become[s] the site of consensus on the legitimacy of the state" (Nakhimovsky 2011: 170). A legitimate state is thus a nation-state; its antonym is the medieval empire (Hont 2005: 449-450). Fichte's *Reden* exemplifies the canonical argument in favour of national self-determination (Fichte 2008 [1808]). As said earlier, Fichte argued that the linguistic nation constitutes a life world with its own distinct will, to which only other members of the community have direct access: Taylor's aforementioned common mind. The state enables the nation to freely pursue its will, or at least express it (Abizadeh 2012: 869).[11] To make the national will politically viable, the nations' borders must delineate the borders of the states (Canovan 1996: 5). On more practical grounds, Friedrich List argued that the nation should decide over its own economic policy in full autonomy. The nation-state constitutes the precondition to ensuring a degree of economic autonomy in which the nation can discharge its will (e.g. Hont 2005: 148-155; Levi-Faur 1997). The aforementioned Fichte committed the A-B-C paradox of nationalism, that is, not assigning equal right of self-determination to each nation (Morgenthau 1957). This paradox, however, is not inherent to nationalism. Herder, by contrast, explicitly embraced a kind of interpolity cultural pluralism between nations with different but equally valid interpretations of the good (Geuss

1996: 156). He ascribed to the ideal of self-confident friendly nations (e.g. Patten 2010). In both versions of the argument, the legitimate state should be a nation-state, that is, the borders of the nation should coincide with those of the state.

Two canonical nationalist arguments further flesh out the legitimate relationship between the state and the nation. Firstly, the sovereign state has a duty to ensure the continuity of the nation. The sovereign state's legitimacy rests on the nation's right of self-determination, hence the state should ensure the existence of the nation. Herder's ideal is an example of a world consisting of self-governing nations living in harmony. According to him, however, the creation of artificial empires caused the demise of self-governing nations. Herder argued that the 'artificial' modern state should act as a 'utilitarian entity' in these circumstances (Patten 2010). The state had a role in the paleogenisis of the nation (Eggel, Liebich et al. 2007: 62). A legitimate state should pursue the cultivation of a mature self-confident nation through formative, moral, defensive, educative, and integrative functions (Eggel, Liebich et al. 2007: 66-71). According to this logic, the modern state's legitimacy relied on securing the national identity. This protection of national unity remained an important consideration for judging the sovereign state's legitimacy. Max Weber, for instance, argued that the nation should act as the criterion for judging state policies' legitimacy (Weber 1994 [1895]: 16-17). Social policies are legitimate if they avoid threats to the unity of the German nation which arise from class conflict (Weber 1994 [1895]: 26). Moreover, Weber explicitly stated that welfare policies should build the 'kind of people they will *be*' (Weber 1994 [1895]: 15; italics in original), meaning that the state should secure the nation's future. National unity is not taken for granted, but it requires state protection in modern circumstances. Implicitly underlying his argument is that the state has to coincide with the nation to fulfil this role (or attain congruence), making the existence of nation-states a precondition to the fulfilment of this specific criterion.

A second set of canonical arguments requires that the legitimate sovereign state submit to the nation's will. Authoritarian regimes often appeal to the nation's will, though without any democratic structures. Carl Schmitt exemplifies the logic of this authoritarian ideal when he argues that the

sovereign derives its legitimacy from representing the community's shared identity. The polity should constitute a political community of friends with a shared identity -- the sovereign should represent this collective identity and ensure the unity of the nation. His theory, however, ultimately relies on identity rather than institutions to ensure coherence between ruled and rulers (Schmitt 2007 [1932]). State citizens need a collective identity to guide the rule of the sovereign (Müller 2010b). This conception of popular sovereignty can thus inform undemocratic, hypothetical constructions to legitimate sovereign state rule rather than popular self-determination. Historically however, the state has gone from "something that dictates to the [individual] will to something that empowers it" (Frost 2001: 501).

The congruence between rule and rulers' will informs democratic proposals for a nation-state. These democrats tend to be sceptical of the full transfer of sovereignty to the regime. Rousseau famously stated that citizens' unified *volonté générale* should determine the republic's laws and that the regime's legitimacy therefore relied on this direct expression of the national will (Rousseau 1987 [1762]). In other words, he rejected mediated rule, as argued for by Hobbes and Locke (Hont 2005: 465; Shell 2003: 56), at least for constitutional laws. Explicit consent had the added value of generating a sense of obligation to follow laws (Williams 2007: 480-481). Mazzini similarly argued in favour of nationally organised republics (Recchia and Urbinati 2009). In these republican legitimations of rule, the distinction between state decision and popular consent collapses to a large extent because the nation participates directly in its self-legislation. Unlike their republican counterparts, liberal nationalist arguments legitimated representative models of democratic will-formation. John Stuart Mill, for example, made a *primâ facie* case for determining the boundaries of representative government using nationality because rulers and ruled share the same sentiments (Mill 1865: 120).[12] Representation of the national identity is important because the liberal modern state should reflect the popular will. In modern mass societies, direct representation of the popular sovereign in the legislature is not feasible. Instead, shared sentiments should ensure congruence between legislative decisions and popular will, nationhood comes to be understood as an "expression of a people's collective will" (Barnard 1983: 231). Some theorists

argue that, from this point, the democratic right of self-government is transmuted into the similar yet conceptually distinct right to national self-determination (e.g. Abizadeh 2012; Tamir 1993; Yack 2001). According to both strands of argument, the nation requires democratic state institutions to express and pursue its national will.

The nationalist line of thought depends upon the congruence between the borders of state and nation. Despite the constructed nature of the cultural identity, it remains a conceptual precondition for the possibility of a legitimate state because the sovereign state's authority depends on the nation's right to self-determination. Each nation finds its freedom in the active pursuit of its own understanding of the common good. In modern circumstances, theorists argued that the state is a necessary political vehicle to discharge this right in a meaningful manner. The 'first' justificatory requirement of legitimacy, therefore, is that the state coincides with the nation: the nation-state. The legitimate state should actively contribute to the construction of the nation, or in more primordial terms, it must 'awaken' it (Abizadeh 2012: 868-873). The two canonical arguments, which flesh out this relationship, clarify that the state's legitimacy depends on the congruence between the state's actions and the nation's will. Unlike their authoritarian counterparts, democratic nationalists argue that democratic practices of popular will-formation are necessary to ensure the expression of the national will in state decisions. Andrew Vincent observes that although popular sovereignty and national self-determination might not conceptually necessitate one another, they do have a 'deep intuitive' connection (Vincent 2002: 32), to the extent that the modern state's sovereign authority even became equated with the national community's right to self-government (Vincent 2002: 28-34). Nationalist positions thus came to express popular sovereignty as a form of national self-determination which relies on the congruence between the borders of the state and the nation.

IV - The national identity as social precondition for the state

This section focuses on current democratic arguments which hold nationhood as a precondition of legitimate state rule. These justifications tend to focus on

the presence of a communitarian identity as precondition for the functioning of mass democracies and welfare regimes. They are often less concerned with exact definitions of the national identity than with the associative sentiments that a communal identity should generate. This process of identification has become the linchpin in these contemporary arguments. The term 'associative sentiments' is drawn from Yael Tamir's *Liberal Nationalism* (1993).[13] According to her, identification with a national community generates associative sentiments. In a similar vein, Liah Greenfeld asserts that "the psychological rewards inherent in nationality [is] its status-enhancing quality. Nationality makes people feel good" (Greenfeld 1992a: 489-490). This status relates to partaking in a greater whole that transcends individual's finite existence (Vincent 2002: 95-96). This status should generate allegiance to one's state despite injustices and the lack of fair play within it (Tamir 1993: 134). In the previous conceptual genealogies, I alluded to the importance of nation-building for the modern 'equality area'. Despite its elitist origins (Greenfeld 1992a: 487-488), nationhood became an egalitarian concept. Its presumption of essential sameness -- whether practically reflected or not -- was essential to the generation of associative sentiments. These sentiments, according to these arguments, are essential for the functioning of modern mass democracies and their welfare regimes.

The associative sentiments of nationhood should motivate citizens to participate in public life. In this context, modern nationalism can be understood to re-forge patriotism, a concept which has historically been in close connection to the *raison d'État* (Vincent 2002: 36-61). Traditionally, patriotism referred to a republican *patrie* (e.g. Vincent 2002: 110-135; Viroli 2002). It became evident during the French Revolution that the sentiment of patriotism could inspire citizens on a large scale.[14] The French revolutionaries utilised this affect to draw the masses into revolt against the *ancien regime*, and in pursuit of the good of mankind rather than the particular national one (Hont 2005: 494-508). In the aftermath of the revolution, this Universalist patriotism was transformed into a Spartan nationalism. Istvan Hont (2005) argued that absolute monarchs understood the potential of this militaristic patriotism and harnessed it for themselves. Early modern states would draw upon this sentiment to mobilise their population for military and economic

struggles (Hont 2005: 508-526). Inspired by this nationalism, citizens made great sacrifices for their nation. Absolute monarchs and commercial states alike harnessed the psychological force of patriotism in order to fuel collective pride (Hont 2005: 115). Political theorists, like Herder, had been suspicious of patriotism specifically for the reason that it could become the object of state manipulation (Hont 2005: 117-156). Patriotic sentiments nevertheless became a source of competition and envy between nations rather than confidence and emulation (Hont 2005: 115). This motivational force was also recognised by early modern theorists; the lack of patriotism was a cause of concern for many influential republican thinkers, like Smith, Ferguson, Madison, and Constant (e.g. Brugger 1999; Kalyvas and Katznelson 2008). James Madison argued, for instance, that a democratic citizenry has to remain vigilant of its government so as to prevent abuses of power (Elkin 2006). The motivational force of republican patriotism should ensure citizens' participation in modern republics. So nationality, rather than democratic citizenship, motivates participation in democratic self-governance. In more contemporary arguments, the nation also features as a "battery" for mobilization within mass societies (Canovan 1996: 72-75). The people as nation is thus a necessary precondition for mass democracy because it motivates citizens to vote and participate in other aspects of the political life of enlarged polity.

The shared national identity is also deemed essential for securing freedom in representative democracies. Modern liberal nationalist theorists did not believe in the possibility, or necessarily value, mass participation. Yet this practical impossibility informed their defence of nationhood, as exemplified by J.S. Mill (Varouxakis 2002: 5-6). He argued that representative government is a necessary institutional innovation in modern mass societies. What results however is that the sovereign people only occasionally have the opportunity to directly participate in self-government (Ten 1998: 377). Physical, social, and technical distances separate the citizens from their representatives. In the main, free institutions can only function properly in a situation of shared sympathies that constitute nationality (Mill 1865: 120).[15] Nationhood, therefore, is an important consideration in the organisation of political regimes.

> Where the sentiment of nationality exists in any force, there is a *primâ facie* case for uniting all the members of the nationality under the same government to themselves apart (Mill 1865: 120; italics in original).

The reason, according to Mill, is that a regime with multiple nationalities would result in distrust in government. The acceptance of common decisions relies on the existence of a degree of trust between ruled and rulers. Only if common sympathies exist will citizens trust the representative government to rule for the common good (Mill 1865: 120-121). This canonical argument on trust features in arguments on the EU's identitarian legitimacy (e.g. Dehousse 2003; Føllesdal 2006: 455).[16] The reason for its importance however is that citizens comply with regulations which do not necessarily seem in their interest. If this were not the case, mass enforcement would be necessary. This observation features in arguments stressing the role nationality plays in the prevention of abuses of power in liberal regimes. Mill argued, for instance, that common sympathies of nationality bind citizens and their military. He argued that if an army would identify with its fellow citizens it would be less likely to turn against them, ensuring citizens' confidence in their freedom (Mill 1865: 121). On this account Harrington's lieutenants should identity with the real popular sovereign in mass democracies rather than the temporary governors of the polity. Citizens' freedom in mass societies, thus, relies on trust between ruled and rulers, a relation which can only be generated by a shared associational sentiment. This sentiment relies on the existence of the people as a nation.

A communitarian identity is also deemed essential in common decision-making and redistribution processes within pluralistic polities. According to an influential communitarian argument, neither weak interests nor procedures are sufficient to avoid armed conflict within a polity. Charles Taylor argues that "[citizens] have to be able to trust one another and have a sense of commitment to another, or the whole process of common decision will poisoned by division and mutual suspect" (Taylor quoted in: Canovan 1996: 16). A national identity generating trust and solidarity -- 'commitment to another' -- is thus posited as a necessity for a functional mass democracy. These arguments also draw upon historical evidence to bolster these claims.

Greenfeld, for instance, argues that nationhood becomes an idea which attenuates internal divisions of class, gender, and other social position (Greenfeld 1992a: 488).[17] The communitarian identity transforms value conflicts into 'mere' conflicts of interest. The liberal settler societies that faced indigenousness populations, by contrast, engaged in ethnic cleansing abroad despite their seemingly civic self-understanding (Mann 2005a). Trust and solidarity would also be attributed an important role in the sustainability of extensive welfare state regimes. According to identitarian arguments on the state's legitimacy, a national identity is a precondition for reaching the necessary degree of solidarity required for welfare redistribution. This means that citizens' identification as equal members of a nation can be channelled into a willingness to sacrifice resources to provide for other members (Miller 1999; Scharpf 1999). Communitarian critiques of liberal theories of justice echo the same theoretical objection; namely that redistributive policies require a national community (Tamir 1993: 118) because the degree of redistribution associated with welfare regimes would require mass enforcement. Without solidarity, mass resentment risks being generated and the stability of the established order undermined. The Beveridge report expresses a similar understanding of the psychological foundation of the British welfare state (Canovan 1996: 31). These arguments assert that democratic welfare states require associative sentiments of nationhood to function properly. Thus, following Greenfeld, the idea of a sovereign nation persists due to its sentimental value despite the disappearance of the original circumstances (1992a: 489-490). Identitification remains a precondition for legitimate state rule due to its ability to generate associative sentiments.

Finally, contemporary arguments stress that a national identity remains essential for the functioning of the public sphere. Earlier in this chapter, the existence of the nation was linked to the existence of the national public sphere. According to canonical arguments, however, the existence of a linguistic nation is also necessary for a functional public sphere, which is itself essential for democratic popular sovereignty. To anticipate my argument, the connection between these conceptions is the essential observation in the functional vindication of popular sovereignty, as well as its condemnation in contemporary Europe. For the canonical formulation of this argument I turn

once again to J.S. Mill. He argued that the existence of a functioning public sphere is the essential precondition to will-formation processes. His argument focuses primarily on a shared media to create a public opinion to guide government. Mill argued that,

> Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist. […] The same books, newspapers, pamphlets, speeches, do not reach them. One section does not know what opinions, or what instigations, are circulating in another (Mill 1865: 120-121).

Mill's focus is on how the public sphere acts as a precondition of legitimate representative government. The previous genealogy's emphasis on public deliberation and accountability parallels his argument, but he posits the people as nation rather than *demos*. The socio-cultural bond acts as a precondition for the emergence of procedural democratic bonds of collectivity. More recently developed arguments assert that public processes of socialisation can continue to shape the common will (e.g. Frost 2001; Tamir 1993). They nevertheless continue to posit socio-cultural identitarian bonds between citizens prefiguring procedural democratic ones. Contemporary arguments effectively continue to make sense of the legitimacy of the modern state based on a common identity among rulers and ruled. This argument therefore relies on a high degree of congruence between the borders of the nation and the sovereign state.

V - The self-determination of a socio-cultural community

A conceptualisation of the people as nation grounds these identitarian legitimations of the state. Exact definitions differ, but a common focus is set on sharing a socio-cultural identity, which should inform a sense of communal belonging. The national identity is the source of the state's legitimacy for both normative and sociological reasons that often intertwine (see also Abizadeh 2012). The conceptual structure describes the nation as a socio-cultural

community with a right to self-determination. This identiarian conception of popular sovereignty prescribes that the borders of the nation and the sovereign state should coincide with another. The sovereignty of the legitimate state thus relies on the existence of an underlying socio-cultural community. The nation-state enables the discharging of nation's right of self-determination; conversely, a legitimate state pursues the national will of this community. According to more contemporary and sociologically-oriented arguments, patriotism, trust, and solidarity are important sentiments that ensure the proper functioning of modern democratic welfare states. Furthermore, a communitarian identity is necessary for the functioning of a public sphere which enables the democratic process of will-formation within a political community. The legitimacy of the modern state, as a result, continues to rely on a communitarian identity between citizens; the people as nation.

The definition of the people is an explicit concern in these canonical arguments. They posit a communitarian identity based upon participation in the public life of the nation. The exact definitions include both ethnic and civic aspects, however the essential aspect for many arguments has been citizens' identification with others as part of a national community. The citizens should identify as an authentic community with a shared heritage. This heritage can find its expression in either sociological characteristics, such as race, or political values, as expressed in foundational declarations. The exact definition, however, is not essential for the conception of the people as nation. In practice, this identity derives from socialisation and participation in a public sphere, as broadly construed. These common practical experiences give rise to a set of shared cultural frames of reference (Frost 2001). National identity is the product of public life. These canonical arguments, it must be remembered, propose that the nation and state require congruent borders. These socialisation processes (should) consequently take place within the borders of the nation-state. Yet this particular cultural community has a right to pursue this publically constructed common will. According to these identitarian arguments, the particular national will justifies nations' right to self-determination, which translates into a political right of sovereignty. The identitarian conception of popular sovereignty consequently implies the pursuit of the nation's will. Conversely, the sovereignty of the state is a mirror

reflection of the underlying community's right to self-determination. As a nation-state, the sovereign state functions as a tool to discharge the nation's will. The communitarian identity is a precondition to the legitimate sovereign state. The national identity, therefore, constitutes the relevant bond of collectivity underpinning this wide range of more or less ideological nationalistic arguments.

A national identity sets boundaries to the people as nation. This identity is (re)produced through nationally organised socialisation processes. This bond of collectivity eschews the universalism of those underpinning the technocratic and democratic conceptions of popular sovereignty. The people as beneficiaries and as *demos* had no inherent criteria of exclusion within their criteria of legitimacy. Identitarian arguments on the state's legitimacy, by contrast, revolve around the existence of boundaries between political communities. Substantive markers limit the ability to identify with the community, which is more pronounced for 'ethnic' than 'civic' markers. The relevance and meaning of these symbols, however, remains malleable. This criterion is, in principle, generalizable across polities because each nation has a right to its own polity, and every individual is part of a national community.[18] The national identity should determine the borders of the sovereign state, which implicitly assumes membership to co-nationals living in close proximity. As a result, this conceptual border does have some relationship to the state in these arguments. Nationalist arguments in colonial and anti-imperialist contexts, by contrast, illustrate that the state is not a necessary pre-condition to the establishment of the borders of a nation (e.g. Anderson 2006). The aforementioned reliance on a public sphere can further ground this assumption. Everyday life cultural processes have become institutionalised in a shared public sphere with educational, political and social aspects. In this context, the legitimate nation-state should contribute to the creation, protection, and stability of a national identity, as Rousseau already advocated. In democratic versions of the argument, citizens should be able to shape their identity through these socialisation processes (e.g. Frost 2001; Tamir 1993). In short, the boundaries of the people as nation derive from a communitarian identity which arises from nationally organised public spheres through which

citizens gain common frames; a culture. The communitarian identity of the people sets borders to the polity.

VI - Conclusion

This conceptual genealogy reconstructed the conception of popular sovereignty which governs first-order disagreements on the European identity. As such, this reconstruction is an essential part of this thesis' argument. The underlying identitarian conception of popular sovereignty governed canonical arguments on the nation-state's legitimacy. These arguments posit an identitarian bond which arises from public socialisation processes. Particular historical contexts shape theorists' definition of this national identity: civic, ethnic, and more recently imagined. Despite this diversity, a recurrent point is that modern state legitimacy requires that citizens share in such a communitarian identity. A legitimate state is a nation-state because the national community requires a sovereign state in order to freely pursue their will. On this identitarian conception of popular sovereignty, the constituent power authorises the constituted power in virtue of the national right to self-determination. In more sociologically-oriented arguments, a sincerely held national identity is deemed necessary for the functioning of the modern democratic welfare state. Congruency of the borders between nation and the modern state remains an essential precondition of legitimate politics in modern circumstances. This mix of normative and sociological reasoning legitimates modern state rule based upon a common national identity. This bond of collectivity is continuously reproduced in socialisation processes contained within the borders of the nation-state. Citizens' identification with one another creates an inner boundary between nations, whilst nationally organised socialisation processes give territorial borders to *national* identities. The people's conceptual borders thus remain related to the state. Unlike the previous conceptions however, this conceptualisation of the people does offer a separate criterion of exclusion, in principle distinct from the state: national identity. This conception of popular sovereignty therefore has strong exclusionary tendencies since each nation has the sovereign communitarian right to autonomous self-government. The cultural particularity justifying the

polity's closure, which, as we shall see in chapter seven, creates a particular challenge in making sense of legitimacy in contemporary Europe, grounds this particular conception of popular sovereignty. To appreciate this challenge, I will first analyse the three conceptions' vindication in making sense of legitimacy in Europe's modern statist institutional landscape at the normative level, and as heuristic tools.

Endnotes

[1] (Maurras quoted in: Canovan 1996: 56)

[2] I will not appeal to any particular theory of nationalism. For a good overview of the philosophical accounts on their moral worth, see (Frost 2001). But as Catherine M. Frost herself observes, "they all point to some dimension of the truth about nationalism" (2001: 487).

[3] In a similar vein, Michael Mann distinguishes between a liberal and organic version of the people: the *demos* and the *ethnos*, respectively (2005b).

[4] For the original, see http://www.archives.gov/exhibits/charters/declaration_zoom_2.html (last accessed 3 July 2014).

[5] On this and other inequalities among American citizens, see (Greenfeld 1992b: 449-460).

[6] An interpretation stressing the importance of the divine legislator for choice, see (Inston 2010). Consent is important for Rousseau because physical force cannot justify a political order. The moral acceptability of the order depends upon an act of will (Rousseau 1987 [1762]). This interpretation, however, does not address the importance of social homogeneity before and after establishment of a sovereign people in Rousseau's political thought.

[7] The literature on republicanism in relation to other models, such as liberalism and discourse theory, tends to stress the communitarian nature of republican accounts of the people, see e.g. (Bellamy and Castiglione 2013; Habermas 1994; Michelman 1989).

[8] To quote Rousseau at length; "One that, finding itself bound by some union of origin, interest or convention, has not yet felt the true yoke of laws. One that has no custom or superstitions that are deeply rooted. One that does not fear being overpowered by sudden invasion. One that can, without entering into the squabbles of its neighbors, resist each of them single-handed or use the help of one to repel another. One where each member can be known to all, and where there is no need to impose a greater burden on man than man can bear. One that can get along without peoples and without which every other people can get along. One that is neither rich nor poor and can be sufficient unto itself; finally, one that brings together the stability of an ancient people and the docility of a new people" (Rousseau 1987 [1762]: 169-170).

[9] For similar rejections of materialism in modern political thought, see, for example, (Mosca 1939: 72; Weber 1978).

[10] One might talk to a degree about individual choice in individual experience (Tamir 1993: 13-34), the choice however does not relate to nationality but rather to support for a regime that claims to be its representative.

[11] In his *Der geschlossene Handelsstaat*, however, Fichte argued that nobody is free in the state of nature, because absolute freedom inevitably results in conflict. The only way out was "a self-limitation of activity by the creation of a state" (Nakhimovsky 2011: 147). He concluded that "[the state] unites an indeterminate crowd of men into a *closed whole,* into a *unity.*" (Nakhimovsky 2011: 147). This argument echoes the Rousseauvian concept of the nation.

[12] Mill did not ascribe the possibility of representative government to all nations, but set a certain level of civilization as necessary precondition. On Mill's perspective on lesser peoples, see (Smits 2008). See also (Mill 1991 [1859]: 13-14).

[13] See also John Horton's theory of obligation (Horton 1992).

[14] Taylor indicates that French revolutionaries were arguably already directed toward participating in mobs (Taylor 2004). Jason Frank further indicates a similar sentiment among settlers in the United States (Frank 2010).

[15] The case is only *primâ facie* because Mill did not believe that all populations had reached the necessary level of political maturity (Smits 2008) and geographical considerations, or other situational circumstances, would prevent the formation of a nation-state (Mill 1865: 120).

[16] Føllesdal focuses on other contingent compliers to ensure trust and trustworthiness (Føllesdal 2006: 454-462). It should however be noted that he includes elements that could be deemed part of a more civic conception on nationhood because he stresses the creation of a shared public philosophy and political practices.

[17] On societal cleavages, see (Rokkan 1999). Unlike regions and classes, religious divides resist reduction to purely interest-based explanations. It has unsurprisingly been, and continues to be, one of the historical markers of various stories of nationhood. Moreover, the politicization thereof remains a source of secessions, as in the case of Sudan, and conflict, as in Northern Ireland for instance.

[18] The historical contingency of nations might well pose insurmountable challenge to theories of nationhood (e.g. Abizadeh 2012; Hont 2005: 451; Vincent 2002: 4). In a different vein, one can legitimately question why the nation is the politically relevant cultural community (Näsström 2007). The nationalist arguments do not explicitly reflect on these questions, but instead assume the nation to be relevant community.

Chapter 6: The Institutionalisation of Peoples in Sovereign States

> [The] 'coincidence' of the various boundaries is what had brought about out common sense perception of what a state-society should be and how it should work. This coincidence produces a collectivity of human beings that share a common understanding about what is important in their lives (identities); mostly interact with each other inside this collectivity through social and economic practices and activates; share rules and have ways of deciding how to regulate their lives in common
>
> Stefano Bartolini, *Restructuring Europe*, 112

> Each phase of [state] development left some vestiges of the past in the more recent functions: the *sovereign warlike state* has left the defence of the community and order; the *closed commercial state* left the attention to economic prosperity and a focus on the economic internal resources as weapons in international trade competition and international power; the *liberal constitutional state* has left the rights and procedure to defend individual economic freedom, first, and later on, other freedoms; the *national state* has left the national community and identity…
>
> Stefano Bartolini, *Restructuring Europe*, 111[1]

I - Introduction

The previous three chapters reconstructed contemporary conceptions of popular sovereignty from canonical arguments on the state's legitimacy. Each chapter focussed on those arguments closely associated with a justificatory logic, which grounds a prominent criterion of legitimacy in the contemporary debate on the EU's legitimacy. Popular sovereignty emerges from this genealogical endeavour as being conceptualised in a technocratic, democratic and identitarian manner. The contemporary conception of popular sovereignty, therefore, is a multi-faceted one. The reconstruction demonstrated that each conception of popular sovereignty posits a distinct bond of collectivity, which transforms a multitude of individuals into a popular

sovereign. The people are conceptualised as beneficiaries of security and economic prosperity, as a *demos* engaging in self-governance through democratic procedures, and as a nation due to public socialisation into a national identity. These bonds set a principle for inclusion, which directly relate to a specific criterion of legitimacy. The boundaries, as I nonetheless suggested, are often conceptually dependent upon the existence of a sovereign state. As we shall see, Europe's modern states pursue and shape the shared interests, institutionalise democracy, and enclose socialisation processes in a manner, which institutionalises such conceptual boundaries congruently. The vindication of this multi-faceted conception depends upon, on the one hand, meeting the basic legitimation demand from within specific historical circumstances and, on the other, the capacity of political fictions to make sense to agents within existing institutional realities. Following a vindication at the normative level, this chapter situates this conception in Europe's statist polity before integration, and in which, so I will argue, it became a plausible heuristic device for guiding citizens' actions. The central reasons are that the normative systems associated with each conception of the people became sociological realities within each state's territorial borders. Secondly, sovereignty found practical resonance in the structuring of power within these polities. That the different national systems institutionalised congruently played a fundamental part in ensuring that the core political fictions made sense simultaneously.

In this chapter, I argue that the reconstructed conceptions of popular sovereignty could make sense in the European state system before European integration. To return to the framework introduced in chapter two, a legitimation story of popular sovereignty relies on the '*willing* suspension of disbelief' to generate legitimacy. Citizens have to come to accept themselves, without clear evidence, as united and self-governing, and even to accept or ignore some dissonance between practice and fiction. The conceptual structure of popular sovereignty, for instance, faces the challenge of making sense of the everyday reality of rulers who command the constituent power (e.g. Loughlin 2014). Two broad conditions make the willing suspension of disbelief a plausible prospect: (i) a conception makes sense of a political order as normatively desirable -- Williams' first political question and basic

legitimacy demand -- within its own historical circumstances and (ii) a conception can plausibly act as a heuristic device within the institutional context. In this sense, a realist vindication requires a conception to make sense at the normative and the heuristic level. The latter relates to popular sovereignty in that the political fictions of the people and sovereignty should make sense within the historical circumstances. My claim is that the multi-faceted conception of popular sovereignty could simultaneously and plausibly make sense of the modern state legitimacy because conceptualisations of the people and sovereignty were institutionalised congruently within state territories. Before turning to the institutional landscape, I firstly argue that the three conceptions meet the basic legitimation demand together in modern state polities, hence allowing me to provide a vindication of the contemporary multi-faceted conception at the normative level. I then reconstruct the institutional landscape in which the normative heart of these stories -- the political fiction of the people -- could make sense to political agents. I argue that normative systems associated with the people became institutionalised conterminously within Europe's territorial states, and resulted in the integration of the same group of territorially bounded multitude into a people. For my institutional analysis, I draw extensively upon Stefano Bartolini's work. I embed his institutional analysis within this normative evaluative framework on the state's legitimacy. Bartolini, by contrast, takes a starkly empiricist-positivistic approach to question of legitimacy (see Bartolini 2005: 165-174). I additionally draw upon other historiographies to draw out particular aspects of these legitimation processes in Europe, especially those that pertain to nation-building. After this institutional analysis of Europe's peoples, I reflect on the political fiction of sovereignty through an analysis of the organisation of power within the European polity. The centralisation of decision-making power and resources turned this judicial fiction into an empirical reality. I hope to convincingly show that the acceptance of the state's sovereignty relied, in part, on meeting the criteria of legitimacy. State agents were therefore spurred to actively pursue the institutionalisation the people in order to make fact and fiction align to a greater degree. In these circumstances, I conclude, the core political fictions of the contemporary conception of popular sovereignty could

make sense and could guide citizens' normative appraisal of their rulers, that is, to judge the state's legitimacy.

This chapter will unfold in four sections. The next section (section II) offers a brief diachronic genealogy, which proposes a potential explanation of the complementary role of conceptions of popular sovereignty in making sense of the legitimacy of the sovereign state in modern circumstances. This realist analysis vindicates the conceptions at the normative level. The subsequent section (section III) illustrates that bonds of collectivity became institutionalized within the borders of the modern state in Europe. The same group of individuals became integrated through multiple systems within the territorial state's 'hard shell' (Hertz 1957). These largely coinciding systems were a crucial condition for these conceptions of popular sovereignty to make sense simultaneously. In the next section (section IV) an analysis of the organisation of power indicates that the *de facto* sovereignty of the state made sense in this context. The political agents of the sovereign state have an interest in keeping the political fictions of popular sovereignty in place, therefore; I therefore suggest that they actively pursued the congruence between fiction and fact during state-building processes. In the conclusion (section V), I summarize that the vindication of this multi-faceted conception relied upon its ability to make sense of the legitimacy of the modern sovereign state at the normative level. The plausibility of the fictions meant that they could guide citizens' attempts to make sense of the state's legitimacy in practice. Hence, I offer a vindication of this multi-faceted conception of popular sovereignty in modern Europe before European integration.

II - A vindication of the multi-faceted conception of popular sovereignty

This section offers a normative realist analysis of the contemporary, multi-faceted conception of popular sovereignty. The vindication, or condemnation, of a political conception relies on its functionality in making sense of a political order's normative attractiveness from within a particular set of historical circumstances. I shall argue that the complementary functions of making sense of aspects of modern politics can vindicate this three-fold conception of popular sovereignty. Drawing inspiration from Williams' *fictional* genealogical

method (Williams 2004), I offer a *potential* explanation for these conceptions as functional responses which make sense of the three key features of modern enlarged polities: their complexity, value pluralism, and closure. This brief potential explanation offers an account of how output, democratic and identitarian legitimacy came to complement one another. The claim is, of course, *not* that the conception emerged in accordance with this narrative. The latter is clearly a simplification for the purposes of the argument. I leave out objections, details, and arguments found in the previous chapters to keep this section parsimonious. This fictional genealogy nevertheless constitutes a realistic justification of the commitment to this conception. Upon reflection, 'we' can remain confident in our normative commitment to this conception of popular sovereignty because it can functionally make sense of the state as the desirable political order for achieving civic order -- the first political question -- in modern circumstances. This section, thus, does not offer a thick moralistic argument, but rather a realist functional vindication of the contemporary conception of popular sovereignty in its ability to legitimate the modern sovereign state.

The technocratic conception of popular sovereignty offers a fruitful point of departure. This conception can make sense of the sovereign state as the political order most able to deal with the complexity of enlarged commercial polities. Modern citizens have a shared interest in security and economic prosperity. Commercial society, which is a necessary feature of modern polities (Hall Forthcoming: 7), relies on state government. The citizenry thus constitute a group of individual beneficiaries with a shared interest in the establishment and continuation of a hierarchical regime, one which protects them and serves their economic interests. The latter, however, requires the competent government of an increasingly complex social system, which is in turn embedded in a competitive global environment. The sovereign state, with its expert bureaucratic apparatus, is in a position to safeguard citizens' security and maintain the conditions for economic prosperity, which enable individual flourishing. A sovereign state, as the canonical arguments suggests, makes sense as a precondition to the attainment of these benefits in a complex political economy marked by interrelating internal and external dimensions. The competent sovereign state is thus legitimated even when

citizens' do not directly benefit from its rule. The associated criterion of output legitimacy succeeds in generating allegiance on an individual basis in virtue of the benefits each citizen receives. The expertise of the modern state remains essential to attaining these economic benefits in enlarged polities. The vindication of this conception derives from the modern bureaucratic state's ability to deal with the complexities of enlarged modern commercial polities.

This technocratic conception, however, cannot make sense of two other key features of modern politics: its closure and value pluralism. The particular closure of polities does not make sense because the shared necessities and conveniences the technocratic state should provide are universal concerns of all humans. Some might assert that the arguments recognise the existence of distinct polities. The conception of popular sovereignty did indeed become historically related to the conceptual boundaries of the state. As I argued, however, the bond of collectivity offers no normative principles with which to make sense of this particular feature of modern polities -- it simply asserts it as fact. In addition, concerning the key feature of value pluralism, sincere disagreement exists between citizens on the practical conception of the public good in modern enlarged polities (e.g. Bellamy 2000: 189; Mansbridge 1998). Citizens might agree upon vital interests, such as security, or even certain normative commitments such as basic rights. The practical conceptualisation or, put differently, the role of the state nonetheless remains deeply contested in the pursuit these interests and values. The existence of value pluralism in modern mass polities challenges the normative assumption underlying arguments on the state's output legitimacy. Taking sincere contestation seriously means that experts cannot determine the best decisions for all citizens. Competent, sovereign rule can remain vindicated to deal with complexities of modern polities in a competitive international environment, it cannot, however, convincingly claim practical knowledge of the common good. From a fictional genealogical perspective, the democratic conception of popular sovereignty can be understood as a functional response to this shortcoming.

This conception of popular sovereignty posits a need for collective government, though it also recognizes that no substantive agreement exists on preferable outcomes. The inability to objectively establish the 'correct'

interests and values means that state elites cannot govern homogenously without causing resentment among certain groups. A high degree of internal pluralism can even threaten civic peace in the political order. The sovereign people, so the democratic conception posits, should therefore decide upon their understanding of the good from a plurality of standpoints through democratic procedures. Institutionally, constitutional safeguards have to protect the citizens' individual liberty and equality. Whilst democratic procedures channel the citizens' diverse opinions within the polity, transforming them into acceptable collective decisions. A decision taken by the legislature will often only reflect certain parts of the popular sovereign. The collective participation of the citizenry in such processes should ensure support for state decisions because the constituent power has actively consented to, and even influenced, these decisions. The design of institutions for self-government should therefore conform to democratic principles in order to attain legitimacy. At a minimum, these institutional procedures offer institutional mechanisms to prevent value pluralism from digressing into civil war between potentially antagonistic groups, or into domination by the ruling group. The vindication of this conception lies in making sense of the legitimacy of the modern state within the modern circumstances of value pluralism.

The democratic and technocratic conception can complement one another, thereby vindicating both simultaneously. The modern enlarged polity possesses two interrelated characteristics; it is complex to govern and it is composed of a pluralistic population. These features should therefore be made sense of simultaneously. Enlightened self-interest can offer a lynchpin between them; a vast majority of citizens agree upon certain broadly defined vital interests, such as security, and motherhood values, such as basic rights. Disagreement arises however on the substantive definition to adopt, what trade-offs to make between them, or the best way to attain these aims in practical ways. A technocratic administration cannot determine the sovereign's will due to disagreement among the citizens on these issues. Democratic decision-making procedures should ensure the state's decisions reflect a broadly acceptable compromise or majoritarian position without causing too much resentment among minorities. Yet the democratic multitude

still requires a competent state apparatus to implement their democratic decisions effectively. Moreover, the sovereign state's enforcement institutions secure the democratic process to some extent; the legitimate state is represented as a democratic decision-making centre fused with a bureaucratic implementation apparatus. The legitimacy of the state's decisions relies on democratic procedures, while its expertise legitimates their particular implementation. These two conceptions can thus complement each other in vindicating the sovereign state, with output legitimating implementation power and the democratic process its decision-making power. Like the technocratic conception however, the bond of collectivity underpinning the democratic one cannot make sense of the particular closure of modern polities. In short, the technocratic and democratic arguments assume the existence of state borders, but neither can make sense of the particular closure of the political community.

The vindication of the identitarian conception of popular sovereignty lies in its ability to make sense of the closure of modern polities. As such, it acts as a functional response to the shortcomings of the other two conceptions. The modern polity, for better or worse, knows a high degree of closure. The historical fact is that "men live in society, but there have always been many societies and not one society" (Aron 1995: 32). The identitarian conception makes sense of the closure of state-polities in virtue of the existence of cultural distinctiveness between polities. Socio-historical markers demarcate a particular community as a nation with a particular agreement on the common good. Each nationalist narrative is tailored to a particular national community, hence diverse definitions of the nation exist. The identitarian conception of popular sovereignty is nonetheless applicable to all polities; the diverse polities simply reflect the existence of multiple nations in the world. Moreover, these communities should rule themselves because they have particular understandings of the common good. Polity borders should therefore coincide with territorially organised nations. Conceptually, the communitarian identity legitimates the existence of a particular state. This conception finds its vindication by making sense of states' legitimacy in relation to the key feature of closure.

The identitarian conception further complements the others in making sense of the sovereign state as the legitimate modern political order. The modern state's infrastructural power impacts the vast majority of the citizenry (Mann 1984: 113-114). The democratic conception can legitimate this increased scope, however public decisions are also more likely to impact some group negatively in a pluralistic polity. The communitarian bond of collectivity could generate a societal glue with which to prevent high degrees of resentment and to create a degree of solidarity which enables redistribution. On this interpretation, the nationalist conception mediates disagreements between societal factions because it posits certain (imagined) socio-cultural communalities. The latter can thus function to temper conflict between antagonistic elements in a modern polity. Furthermore, this communitarian identity generates trust, which should ensure that modern rulers do not misuse the unprecedented degree of infrastructural power granted to them in order to pursue factional interests. From this perspective, therefore, this identitarian conception also provides the necessary common sentiments between rulers and ruled for a modern sovereign regime to avoid domination. In addition to making sense of the legitimacy of the state in relation to the polity's closure, this conception functionally complements the other conceptions, which also deal with the internal challenges of a complex and pluralistic political environment. Ultimately, the identitarian conception alone cannot be vindicated from this realist perspective. The communitarian identity makes sense of closure through the cultural distinctiveness between modern polities. Yet it cannot function alone, it requires a technocratic conception to direct the national will toward an object of interest, namely, security and prosperity. Furthermore, the democratic conception is necessary to accommodate the continued reality of pluralism within these cultural communities. Most importantly, the modern polity is not only bounded, it is also complex and pluralistic. The identitarian conception offers no functional response to these realities, as its silent on the first and denies the latter. The three conceptions make sense of three prominent features of modern polities -- complexity, pluralism, and closure -- and are therefore vindicated together at the normative level, because they meet the basic legitimation demand for the sovereign state within its own historical circumstances.

This fictional genealogy offers a potential explanation which vindicates the contemporary conceptions of popular sovereignty in their ability to make sense of the sovereign state as the legitimate modern political order. As outlined in chapter two, a normative commitment can only remain vindicated if it offers a widely acceptable answer to the first political question, that is, if it meets the basic legitimation demand. A political concept also has to make sense of the legitimacy of a particular political order within its own historical circumstances The previous three chapters reconstructed the contemporary concept, or rather *conceptions* of popular sovereignty. Their vindication relies upon their complementarity in making sense of the sovereign state as a desirable political order in modernity's complex, pluralistic, and closed polities. The rather elitist and technocratic conception provides an initial justification for state rule. Citizens come together in commercial society to pursue objective benefits for all. This conception cannot, however, make sense of the social pluralism which characterises modern polities. The democratic conception legitimates the modern *democratic* state as the institutional means through which to funnel and transform diverse opinions into legitimate decisions on collective needs and interests. The constitutional state accommodates its sovereign's diversity in democratic will-formation processes. Neither conception, however, posits a criterion of exclusion from the polity, therefore neither can make sense the closure of state polities. The identitarian conception complements the other two by positing a principle of legitimate closure based upon the existence of culturally distinct socio-cultural communities, and, as we will see below, it can furthermore make sense of the segregation of Europe's polities from one another. The central aim of this section has been to hopefully offer a convincing *potential* explanation of this multi-faceted understanding of popular sovereignty. This realist reflection thus provides a vindication of a normative commitment to the multi-faceted conception of popular sovereignty simultaneously *when making sense of the legitimacy of the sovereign state*. From a realist perspective however, it can only remain vindicated if it can plausibly act as a heuristic device. To analyse this plausibility, I will move from the normative level to the institutional one, and create a more sophisticated understanding of popular sovereignty through an analysis of the plausibility of its central fictions.

Before moving on, however, two observations of the contemporary conception of popular sovereignty are important to recognise at this stage. Firstly, as I argued in chapter two, a unitary conception of popular sovereignty governs legitimation stories within Europe's disenchanted political cosmology. The genealogies illustrate that canonical arguments conceptualise popular sovereignty, the people, and the criteria of legitimacy differently. These legitimation stories, however, share a normative commitment to popular sovereignty, because the people's sovereignty should authorise the state's sovereignty in all three accounts. On this conceptual structure, the appropriate criteria of legitimacy for the state should reflect norms inherent to the people's bond of collectivity. This agreement on a conceptual structure is important because, as stated, human practices require that recognised intersubjective criteria persist over time. Even agonistic theorists have recognised the need for a degree of value congruence (Mouffe 1999; White 2011), despite some arguing that political legitimacy can never remain permanently fixed due to a fundamental conflict of values between individuals (Sternberg 2013: 230). A widely-spread agreement is a precondition for the materialisation of the modern state's legitimacy (Friedrich 1974: 111). In modern states, the widely accepted assumption that underpins the contestatory practice of legitimation is that the issue at stake is a proper interpretation of the sovereign people which authorises the sovereign state. In other words, they share a commitment to a unitary conceptual structure of popular sovereignty. This shared structure contributes to the distinct conceptions being plausible simultaneously despite disagreement on the proper meaning of the concept.

Secondly, the words used to express popular sovereignty accommodate the multiple meanings of these distinct conceptions.[2] Istvan Hont rightfully argues that the nation-state and popular sovereignty yoked together conceptually incongruent discourses. In this context, early modern statesmen consciously promoted these compound words to their advantage. Since then, so Hont argues, state elites have had to balance their inherent tensions (Hont 2005: 527-528). A more recent example from the EU debate is the no-*demos* thesis. The term *demos* seems to invoke a democratic criterion of legitimacy, but on closer examination more often refers to an identitarian one. Weiler's thought experiment on the democratic incorporation of the

Danes into a German empire illustrates this well (Weiler 1997: 116). Luuk van Middelaar, on the other hand, uses *demos* to refer to a democratic public along explicitly Deweyian lines (Middelaar 2009: 373-421). The meaning of these concepts need not be restricted to an either/or dichotomy, and *that* can contribute to the consensus relying on three distinct conceptions. These so-called 'mongrel concepts' (Blaazer 2007: 509) can accommodate multiple, yet distinct conceptions of popular sovereignty. Skilful rhetorical use can hide the underlying disagreement on the appropriate interpretation. Another more important reason for their simultaneous plausibility, so I wish to suggest, is the specific institutional context of Europe's statist polity before integration. These historical circumstances made the multi-faceted conception into a plausible sense-making device which, arguably so, also shaped these conceptions. To make this argument, I turn to the institutional context in Europe before political integration.

III - The institutionalisation of the people in congruent systems

The following institutional analysis focuses on the historical circumstances in which the contemporary conception of popular sovereignty could plausibly make sense to citizens. As Williams argued, a vindication of normative commitments relies on their ability to make sense in specific historical circumstances. A realistic vindication, however, also relies on these conceptions ability to plausibly guide political agents in (real) politics (Hall Forthcoming: 13). One central challenge for conceptions of popular sovereignty is the fictional nature of the people as self-governing. The vindication of the contemporary three-fold conception of popular sovereignty further requires that the three distinct conceptions of the people make sense simultaneously. This three-fold conception of distinct bonds can potentially become a source of dissonance between everyday practice and political fiction. My argument is that the willing suspension of disbelief relies on the historical circumstances in the European continent. In short, the same territorially organised multitude became part of three normative systems which institutionalised relationships between them. These systems gave practical resonance to the posited bonds of collectivity which underpin the

contemporary conception of popular sovereignty. In this manner, this genealogy also reconstructs the institutional context in which legitimation stories of popular sovereignty functioned as a heuristic sense-making device.

Many historiographies have been written on the emergence of the modern state and its legitimation in Western Europe (e.g. Axtmann 2004; Bellamy, Castiglione et al. 2006; Bobbitt 2002; Hertz 1957: 475-485; Hont 2005; Sassen 2006; Tilly 1975). My analysis focuses on the importance of the institutionalisation of the bond of collectivity in the European context. As mentioned in chapter one, Stefano Bartolini's *Restructuring Europe* offers a particularly fruitful historiography. Like any historiography, Bartolini's work has its own particularities. His choices are historically sound, but distinct nevertheless. I therefore engage critically with his account by drawing upon other sources to balance certain emphasises. That being said, Bartolini focuses on normative systems which institutionalise relationships between members of a polity (Bartolini 2005: 56-115). These systems, so I will argue, create a degree of practical resonance to the posited bonds which conceptually underpin each conception of popular sovereignty. This analysis is essential for appreciating how citizens could plausibly engage in the suspension their disbelief toward the three political fictions of the people, as well as the fiction of the sovereignty of the modern state. In line with the expectations outlined in chapter two (Barker 2001; Morgan 1988), my analysis concludes that state agents contributed to turning these fictions into institutional realities. The people might well have started as a political fiction (and arguably remains one to some extent), but it came closer to a fact due to the institutionalisation of these relationships through these normative systems. Moreover, the different bonds of collectivity bound together the same multititude, and the bonds reinforced one another. The latter also separated European citizenries one from another, as they created distinct understandings within different historical circumstances. This particularity will, however, feature in the next chapter. The political fictions of the people could make sense to citizens simultaneously because normative systems created institutional relationships between them as beneficiaries, *demos*, and nation.

At this point, two technical remarks are worth considering. Firstly, boundary formation processes and the exact institutionalisation of normative

system varied between European countries. This initial analysis leaves aside many of Bartolini's, as well as others', reflections on the differences between countries. The differences between national arrangements are currently quite significant. In the seventh chapter, I shall focus on their particularity and what impact this has upon the understanding of the contemporary European polity. In addition, I highlight that the substantive understanding of legitimacy, particularly in relation to European integration. For now I instead focus on the similarities between these processes, which Bartolini summarizes as "a historical configuration of highly coinciding and mutually reinforcing boundaries" (Bartolini 2005: 109). Secondly, while recognizing that processes of boundary formation are not neatly separable historically (Bartolini 2005: 112), most agree that state building preceded democratisation and nation-building. Yet the order of nation-building and democratisation remains contested in the literature. Bartolini maintains that democratization took place after nation-building (see also Axtmann 2004).[3] Others, however, argue that this process took place in reverse. Charles Taylor, for example, concludes that "Nationalism […] was born out of democracy, as a (benign or malign) growth" (2004: 191). More elitist forms of representative rule certainly preceded nationalist self-understandings (e.g. Canovan 2005; Greenfeld 1992b; Hont 2005; Tamir 1993). On this point, Bartolini also argues that the liberal constitutional state prefigured the national state (Bartolini 2005: 111). In line with the thesis, the rest of the section proceeds through an analysis of the following; firstly the normative systems which give practical resonance to the people as beneficiaries, then as *demos*, and finally as nation. Each analysis takes as its point of departure the bond of collectivity posited in each conception of popular sovereignty.

The people as beneficiaries share an interest in security and economic prosperity. The sovereign state through its expert institutions governs the domestic economy within its territorial borders. It institutionalises the people as beneficiaries and separates them as a collective from other 'competitor' polities. State formation simultaneously refers to a process of retrenchment of the politico-administrative space of former empires, and to one of enlargement of very localised communities within the medieval feudal system (Bartolini

2005: 59-60). The modern sovereign state is the result of processes of "power, juridical, symbolic and systematic centre accretion" (Bartolini 2005: 59). The centralisation of a legalistic administrative apparatus for tax revenue became essential to train, equip, and maintain professional standing armies (Bartolini 2005: 60-61; Tilly 1975). The monopolisation of force meant the state could maintain order within the polity, which become essential to and reliant on the enforcement of legal contracts (Bartolini 2005: 62-65; Bellamy 2004). Europe's 'warlike sovereign states' actively treated the population on its territory as *its* subjects, but it also became their protector from threats, external and internal, to their physical safety (Bartolini 2005: 111). The enforcement agents of the state institutionalised a normative system of security provision within its territory; the state's subjects thus became beneficiaries, as a collective and as individuals, from threats to their security.

To achieve its Machiavellian aims, the sovereign warlike state increasingly started to use domestic economic means in the international competition for markets (Bartolini 2005: 111; Hont 2005), ultimately resulting in the emergence of the closed commercial state. The security of citizens became intertwined with commercial interests in the reason of state. Around the same time as these consolidation processes, capitalism arose as a "powerful drive to boundary transcendence in the economic sphere" (Bartolini 2005: 72). The agents active in the market required the enforcement of contracts and other rules, a degree of material safety, and possibilities for communication between participants in the market (Bartolini 2005: 73-74). The centralised state could secure these requirements within its territorial boundaries; it would come to guarantee material safety and enforce property laws (Bellamy 2004: 4). In the process, the state rationalised and territorialised the capitalist economy.[4] A national market was created through the destruction of traditional internal economic borders, such as those around rural villages and city markets (Axtmann 2004: 259-261; Bartolini 2005: 74; Gellner 1983; Hont 2005: 456-463). National economic institutions were introduced, such as a single currency, national banks, and stock exchanges (Bartolini 2005: 75-78). In this manner, the borders of the domestic economy would come to coincide with those of the territorial state. The state-governed domestic economy institutionalised a normative system of judicial-economic

relations between individuals within the national state's territory. The coercive institutions of the state thus secured the economic system in which citizens would come to relate to one another. And it is through these structures that state subjects were institutionalised as legal subjects with economic relations, thus transforming the bond of collectivity of beneficiaries into an institutional reality.

Around the 19th century, the closed commercial state had transformed into a welfare state in which citizens became part of an extensive system of redistribution of economic prosperity by the state. The state's policy competences had progressively expanded beyond mere military, tax, and macroeconomic policies into the realms of social security and other redistributive services (Axtmann 2004: 261; Bartolini 2005: 104; see also Mann 1984). Under pressure of democratisation, combined with nationalism, the inequalities and poverty within modern industrialised capitalist economies were no longer acceptable within national contexts; the 'equality area'. In this context, the welfare state arose to redistribute prosperity among the democratic community. This was also, in part, because European states were no longer able to provide security autonomously. The European sovereign state systems were restabilised with support from the United States economic support (Bartolini 2005: 106; Milward 1992; Sassen 2006). In addition, state control of and alignment with the interests of large companies contributed significantly to the successful rise of the welfare regime between the First World War and the 1970s (Bartolini 2005: 108-109). These industrialised economies gained a degree of freedom from external economic pressures (Bartolini 2005: 80). The shift to the welfare state marked the moment from which state institutions could perform tasks traditionally associated with kinship bonds and other a face-to-face communities (Bartolini 2005: 95). In other words, "social sharing institutionalised solidarity in terms of [state benefits] linked to the status of citizens and members of the national group" (Bartolini 2005: 104). This increase in policy competences would result in material benefits for the vast majority of the citizenry. Despite distinct differences between the particularities of welfare states (e.g. Esping-Andersen 1990; Ferrera, Hemerijck et al. 2000), modern welfare systems were compulsory in nature (Bartolini 2005: 107). The enforcement agencies of the

sovereign state therefore play a vital role in its success. The maximisation of benefits relied on “the bureaucratic machinery and technical extractive capacities that the modern state provided” (Bartolini 2005: 106). The bureaucratic apparatus of European states enabled efficient redistribution, thereby reducing the individual contributions of citizens whilst generating greater overall welfare. This normative system also intensified other relationships of security and economic prosperity between citizens, and created new ones. In this context, modern citizens became collective and individual beneficiaries of the sovereign state.

This normative system gave practical resonance to the people as beneficiaries within the state’s territorial borders. The state not only provides security and economic prosperity to the population within its territory, it also created relationships between them as part of a legally governing socio-economic order. In short, the warlike sovereign state, with its extensive enforcement capacity, arose as protector of the population within its territory from both external and internal threats. It relied upon the performance of the domestic economy in competing for resources in the international sphere; the warlike state became a closed commercial state. What resulted was the containment of the forces of capitalism within the domestic economy. The state’s subjects became integrated through centrally administrated economic laws and policies which served to increase overall competitiveness. This state-led economic management would generate unprecedented economic prosperity for European citizenries. The democratization and nation-building processes thus jointly created an area of equality by raising the standards and expectations of the modern state. State citizenries became part of compulsory systems in which economic prosperity was shared among citizens through social insurance schemes and public services. The beneficiaries’ bond of collectivity became an institutional reality within the borders of each European state. These coercively administered systems of legal-economic relations were consequently attributed a territorial border by the state. The fiction of the people as beneficiaries could plausibly make sense to citizens of the modern state. This conception of popular sovereignty therefore found resonance in political practices within the ‘hard shell’ of the sovereign state’s territory. The

contemporary multi-faceted conception, however, also relies on the political fiction of the people as *demos.*

The people as *demos* share a bond of collectivity in democratic procedures that enable self-government despite sincere disagreements on shared interests and values. The democratisation of the state polity created a normative system of procedural bonds between citizens in the state territorial borders. Historically, democratisation has become associated with the dual processes of (liberal) constitutionalism and mass participation in politics (Bartolini 2005: 89). The first process relates closely to the emergence of rather elitist liberal republics. The political constitution lies at the heart of modern liberal republics. These (unwritten) documents attribute the status of citizenship to the denizens of the state. The subjects of the state gained rights against it (Castiglione 1996: 417). These constitutions initially emancipated only a rather elite group of 'citizens'. Furthermore, despite appeals to universal values, these constitutional documents institutionalised a civic order within the pre-existing territorial borders of the sovereign state (Bartolini 2005: 91-95). The constitutional state creates civic relationships between the denizens of the polity. However, as allude to above, in many countries, democratic citizenship was exclusively limited to property-owning men. Subsequent extensions of the franchise included the vast majority of citizens in the electoral process, such as women, tenants, and so on (e.g. Habermas 1992a: 122-129). Citizens could elect representatives in state decision-making procedures, and could therefore only influence decisions in a particular state. In this context, parliaments were useful heirlooms of elite interest representation rather than institutional innovations (Manin 1997: 183-187). They had been part of state decision-making centres before mass democratisation. In addition to the constitution and mass elections, a public sphere took shape within the borders of the state (e.g. Habermas 1992b). These elections further institutionalised procedural relationships between the citizens of a state. They gave the citizenry institutional tools to capture and influence the decision-making centre. Citizens tried to capture state institutions in order to advance their particular claims. Elections were the most institutionalised method, but not the only one. Civil rights movements, for

instance, pushed forward their claims through mass mobilisation (Axtmann 2004: 261). The creation of national media outlets also enabled public deliberation, an integral element of will- and opinion-formation processes in mass societies (Bartolini 2005: 82; Habermas 1992b). The normative system of the constitution, electoral politics, and the public sphere institutionalised the people as *demos*, transforming Europe's liberal republics into mass democracies. The universal values informing democratic procedures would effectively create procedural relationships between the inhabitants within each European state polity.

The territorial closure of European states contributed to the creation of politically competing groups within the polity which required cementing through a procedural bond so as to avoid civil war. In contrast to the main theoretical narrative, the need for procedural ties might itself be a product of the institutional closure of European societies. The macro-processes of modernisation generated value communities and socio-economic cleavages (Bartolini 2005: 96). These only became politically relevant, however, because democratic society was 'caged' within the state's borders (Axtmann 2004: 261). This closure limited the available resources and social positions to distribute, and severely constrained citizens' options for exiting the state system (Bartolini 2005: 98). Citizens in similar positions formed groups to pursue their interests more effectively (Bartolini 2005: 99). National cleavages turned into group boundaries within the polity (e.g. Rokkan 1999); the pluralistic dimension of the *demos* was thus, in part, a product of the state-enforced closure of the polity. Put differently, the pluralism posited in the *demos'* bond of collectivity directly relates to the closure of European states. European societies consisted of internal groups with distinct relationships which competed politically. This perspective, however, also clarifies that certain vital interest and value commitments might derive from this closure. Citizens retain an interest in the civic order in order to democratically pursue these interests specifically because they cannot exit the national polity. On the other hand, state agents reached a powerful position within their territory, though the pluralism which resulted from its closure endangered their rule. For ruled and rulers, the democratic framework became a vital interest. This normative system created procedural bonds between competing interest

groups. It is through this process that the people as *demos* gained institutional resonance. The constitutionally organised and centrally enforced order of civic-democratic relations became a reality within the border of the territorial state. As with the beneficiary conception, the people as *demos* could plausibly make sense within the closure of the modern state. In conclusion therefore, the democratic conception of popular sovereignty could guide appraisals of legitimacy within the territorial borders of the sovereign state.

The modern sovereign state would integrate the population within its territorial borders through both a normative system of security and prosperity, and a civic-democratic procedural one. Genealogically, the constitutional state acts as an institutional lynchpin between these normative systems. The state's coercive legal apparatus was at first primarily meant to enable economic freedom. The functions of this initially liberal institution would, however, extend to include the protection and enforcement of citizens' political rights (e.g. Castiglione 1996; Dunn 1994). The democratic constitution governed the practices of the modern state. The claim, however, is not that the liberal state transformed fully into a purely democratic one; the modern state continues to protect and govern the domestic economy. The members of state-polities were part of both a judicial-economic and civic-democratic order, and were consequently tied to their state through two corresponding sets of relationships. The output and democratic criteria of state legitimacy could reinforce one another in this institutional context. Democratically legitimate decisions were, for instance, implemented through the state's legal-coercive infrastructure, whilst the competent state apparatus protected and facilitated democratic procedures. The universalist bonds of collectivity, positing the people as beneficiaries and *demos*, gained sociological plausibility within the borders of European states. Moreover, the political fictions of beneficiaries and the *demos* gained practical resonance in relation to the same group of citizens. The technocratic and democratic conception of popular sovereignty could plausibly inform agents' normative evaluation of their state within these historical circumstances. The vindication of the contemporary multi-faceted conception of popular sovereignty is still incomplete however as it also requires that the people as nation have practical resonance.

The people as nation share a bond of collectivity in a communitarian identity. Public socialisation processes within the state borders create such socio-cultural relationships between citizens. Boundaries between the peoples from different (European) states are additionally created. National political agents use symbolic materials to forge these communitarian identities (Closa 2004). The social and historical markers of the European identities are diverse, however each state's agents politicised and depoliticised cultural features among the majority of its population (Bartolini 2005: 88). Nation-building processes have successfully taken place in each European state. Even in the outlier case of the United Kingdom, an overarching British identity was constructed with specific features which set it apart from other nations (Miller 1999: 155-182). Some countries have of course been more successful than others, as a comparison between Denmark with Belgium can illustrate. Furthermore, sub-national political identities fuel micro-nationalisms, such as in Catalonia and Scotland, which challenge state authority (e.g. Guibernau 2000). In the past, however, this internal socio-cultural diversity was publically denounced as irrelevant, all while participation in national public life continued socialize people into a public culture (Bartolini 2005: 89; Laborde 2004). As Bartolini concludes, despite differences in degree of enforcement, timing, and constitutive ideational elements, the 'technical' processes of nation-building "brought about an area of cultural equality among 'nationals' that transcended primordial and culturally localized identities, when it was not directly reinforcing them" (Bartolini 2005: 88). Distinct cultures emerged within the territorial borders of European states which grounded national identities. These cultures, however, relied upon participation in public socialisation processes.

These socio-cultural systems were created within the territorial borders of the state. Socialisation into a communitarian identity has historically been a state-led process. Leaving aside pre-existing degrees of socio-cultural homogeneity within state territories, European states have actively pursued policies to homogenise and territorialise national cultures (Axtmann 2004: 260-261; Bartolini 2005: 81-89). These official nationalist policies aimed to achieve a form of loyalty grounded in social homogeneity (Anderson 2006: 83-112; Mann 2005b: 61-68). Unlike the ethnic cleansing which occurred in

Eastern countries, liberal European states engaged in linguistic cleansing, thereby setting the stage for the emergence of a national public space (Mann 2005b: 55-61). In effect, the state created linguistic borders between European polities. Print, and later radio and television outlets would, at least initially, operate exclusively within state borders (Bartolini 2005: 82). Compulsory education also played a crucial role because it socialised citizens into national frames from a young age. School textbooks offered official accounts of subjects, such as history, in which the nation features prominently; it created conformity of thought; and finally, incited children to engage in more symbolic practices which invoke the nation (Bartolini 2005: 85-86; Billig 1995: 50-51; Foster 1995: 17). Nationalist policies thus created shared meanings, values, and symbolism (Costa 2004; Smith 1992: 57) between citizens and state elites (Bartolini 2005: 81), markers which would become ever more inconspicuous features in citizens' everyday life. The habitual priming of nationhood continues to happen in European states (Billig 1995). This normative system was arguably intentionally institutionalised within borders of the state so as to generate support among its population. Leaving aside intent, these systems of cultural socialisation were institutionalised within European states' territorial borders, establishing and maintaining national cultures within the nationalised public sphere. Socio-cultural relations became institutional realities within European states' borders.

The closure of the state would also strengthen these socio-cultural relationships, though they would also gain a degree of independence from it. The cultural caging of society took place alongside its democratic capture. Within the state's borders, citizens would participate on the basis of shared socio-cultural frames which make sense of their (political) reality. The communitarian identity was passed on as a(n) (unintentional) heritage to successive generations. The public sphere, as broadly construed, created cultural relationships between the inhabitants of the modern polity, with the result that these bonds grounded processes of co-identification. This normative system initially constructed by the state gave territorial borders to the nation, because the sociological preconditions for such an order were primarily contained within the state's borders. Identity did gain some degree of

independence from the state, with democratic agents losing their moral capacity and right to interfere with these identification processes (Axtmann 2004: 267). In this regard, Étienne Balibar (2004b) draws attention to how the citizenry embraced the organisation of power in Europe into nation-states. He argues that the nation-form, or national social formation, became the dominant form of organisation in modern politics. This institutional reality, he argues, gave rise to the *homo nationalis.* The modern citizen makes sense of their place in the world using the category of the nation-state. This political self-understanding informs their actions and beliefs (Balibar 2004b: 11-12). The organisation of Europe into nation-states reinforced the inner boundary of cultural identity by giving it a form of political representation. Citizens would became the protagonists of the national form in the international arena (Aron 1995: 33). The *homo nationalis* would justify the division of the world into nation-states, even when state agents deem integration or cooperation more favourable. In short, the people as a nation gained institutional resonance, yet it remained a plausible self-understanding without needing active state interference in its construction. Historical processes of nation-building, however, meant that this conception made sense primarily within the state's borders. The identitarian conception of popular sovereignty could plausibly inform citizens' actions when partaking in public socialisation processes. The political fictions of beneficiaries, *demos* and nation might operate on conceptually distinct levels, but the normative systems which validate them integrated the same group of individuals; those within the territorial borders of the modern state.

Finally, these normative systems would enforce each other within their territories, and bolster borders between European polities. In the latter, the judicial-economic, civic-democratic, and socio-cultural relationships between individuals were institutionalised congruently within territorial borders of each state. These systems therefore created relationships between the same individuals, which gave institutional purchase to the three conceptions simultaneously within each state polity. The historical circumstances of each polity influenced these processes and strengthened or weakened their role in the legitimation of the state. Each European polity established it its own

particular constellation of systems within a particularistic conception of sovereignty (e.g. Bellamy 2004: 3; Nicolaïdis and Young 2014: 1410). The specific particularities are discussed in the next chapter. The essential observation for this analysis is that these processes also reinforced differences between European populations. Socio-cultural relationships played an important role in the reinforcement of borders, in part because the nation-state meant an enshrinement of each peoples' particularity (Axtmann 2004: 260-261). To avoid seeming to offer too nationalistic an interpretation, this particularity was also, in part, a product of each state's particular geographical and demographic circumstances (e.g. Bellamy 2004: 3). The identitarian conception of popular sovereignty could justify the distinctiveness of national systems based on the same universalist principles, such as the rule of law and democracy.

The public sphere constitutes an important institutional lynchpin which binds together the three systems. Firstly, this sphere offers both a forum for socialisation processes and for deliberative processes of will-formation, as recognised by contemporary democratic theorists (Bellamy and Castiglione 2013: 213-214; Crum 2013: 616). As Bartolini concludes, "democracy […] operated within areas of considerable cultural homogeneity" (2005: 89; see also Habermas 1996). The civic-democratic normative system relies here on the socio-cultural identitarian one. Processes of mass will-formation require a public sphere to debate matter of the public good, yet the shared cultural frames will also impact on these democratic debates. Furthermore, democratic deliberation becomes part of the construction of the public socialisation processes, focussing them on the state (Frost 2001). Due to this process, democracy can become part of the national identitarian boundary between the Europe's peoples. On this reading, the political fictions of the *demos* and the nation are no longer neatly separable in this institutional context. This dual-institutionalization also contributed to an area of equality in which deep inequality of benefits became unacceptable, with the result that civic-democratic and socio-cultural relationships shaped judicial-economic ones. The state's role in greater redistribution, such as through national insurance and social services, is an adaptation to pressure from the national-democratic public sphere (Habermas 1992a: 132). The question of social

justice -- 'the social question' -- became the responsibility of the sovereign state. In these circumstances, the conception of beneficiaries came to be shaped by the democratic and identitarian conceptions of popular sovereignty. The particularity of each European state, such as its size and natural resources, required, in addition, that these polities develop defence policies and forms of economic management distinct from one another. These civic-democratic and socio-cultural systems also depended upon the trust and solidarity drawn from socio-cultural relationships. In this context, a national identity conceptualised along more organic lines enabled more extensive redistribution (e.g. Greenfeld 1992a). Anglo-Saxon systems, with more civic models, became reliant in this regard on private charity rather than the statist or corporatist solidarity found in their European continental counterparts (Kapeller and Wolkenstein 2013). The particular substance of the socio-cultural relationships between citizens shaped the judicial-economic, as well as the democratic systems within state territorial borders.

The state-governed domestic economy, liberal democratic institutions, and national cultures became particularised, effectively reinforcing the boundaries between European state populations. As Bartolini observes, the highly congruent borders between these systems would progressively separate European polities (Bartolini 2005: 56). The people as beneficiaries, *demos* and nation became institutionalised conterminously. "[This] historical configuration of highly coinciding and mutually reinforcing boundaries" (Bartolini 2005: 109) made the willing suspension of disbelief plausible in European polities because these systems created networks of relationships within the 'hard shell' of the modern territorial state. The political fictions of beneficiaries, *demos*, and nation gained practical resonance for the members of the same political constituency. The three distinct criteria could thus make sense simultaneously of state legitimacy, and even complement one another in these historical circumstances. In conclusion, the citizenry of modern states in Europe could plausibly make sense of themselves as a people in the form of beneficiaries, *demos*, and nation, because these political fictions found resonance in institutional systems within the borders of the territorial state. Moreover, as we will see, the denial of any of the three bonds would come to face the challenge of making sense of the existence of these normative

systems, especially their particularity. In these historical circumstances, the conceptions of popular sovereignty became intertwined, at least in practice. The three conceptions of popular sovereignty, however, do not merely posit bonds of collectivity, but they also make sense of practices of rule as an order. In short, they posit the existence of a sovereign state.

IV - The institutionalization of state sovereignty

The concept of the sovereign state posits an idea of the political order which makes sense of ruling practices within a polity. The organisation of power is an essential historical circumstance to factor in for any conception of popular sovereignty to make sense to the ruled *and* rulers alike. Like the people, the sovereign state is a political fiction which makes political rule intelligible "*as a structure"* (Williams 2005: 10). A process of abstraction therefore takes the place of a complex and diverse set of ruling practices. David Runciman (2003) explains that the state is a fiction akin to money (and the people) which citizens have chosen to believe in. Its sovereign status is as a Searlian social institution attributed to it by the collective political imagination. As such, a willing suspension of disbelief is necessary to accept diverse political institutions as a unitary sovereign state. A clear-eyed reflection shows that European states do not constitute Hobbesian-Kantian sovereign regimes in practical terms, but instead tend to conform to pluralistic Lockean-Montesquieuian separation of powers models (Stedman Jones 1994). Here, an institutionally fragmented regime takes decisions without needing a singular sovereign decision-making centre, *pace* the Schmittian-populist conception of popular sovereignty. These decision-making centres further rely upon the capacity of a diverse set of bureaucratic institutions for the effective implement of their decisions. The sovereign state, in effect, refers to a variety of cultural practices (Bevir and Rhodes 2010). The modern state has nevertheless taken on certain 'marks of sovereignty' (Balibar 2004a) that provide plausibility to its sovereign status, again within its territorial borders.

The core characteristic of the modern state is its territoriality. The state's high degree of territoriality sets the early modern statist order apart from the personalised structures of rule and allegiance in medieval feudal

systems (Bartolini 2005: 58). The territoriality of the modern state describes not only the impenetrability of its geographical borders, but also its exclusive and effective rule over that territory -- its monopolisation of coercive structures (Aron 1995). In this regard, the historical process of state formation have been a series of "protracted efforts of rulers and their staff to translate 'judicial' sovereignty into 'empirical' sovereignty" (Axtmann 2004: 263). The organisation of power was centralised within Europe's territorially structured polities. The state formed a 'hard shell' around its territory, granting the polity with an unprecedented degree of impenetrability (Hertz 1957). Dynastic practices played an important initial role in the centralisation of power in the hands of fewer and fewer elite (Sharma 2015). This process of centralisation became complemented by a Weberian rationalisation in order to suit the demands of the international capitalist marketplace (Lassman 2000: 93). The hierarchical coercive centre penetrated its territory through the rationalisation of various administrative sub-systems under its control (Axtmann 2004: 259-260; Bartolini 2005: 60-64). The twin-processes concentrated power into the hands of state elites, who then became empowered to take and implement autonomous decisions within the territory. The peace treaties of Westphalia in 1648 internationally recognised territory as the organisational principle for states (Axtmann 2004: 260; Bartolini 2005: 64). Territorial sovereignty became the *judicial norm* of political organization in the European continent (Aron 1995). European regimes tried to conquer or at least claim one another's territories, though the destruction of a state was considered unlikely and deemed illegitimate (Bartolini 2005: 65). Bolstering this *de jure* claim to sovereignty, the decision-making centre acquired unprecedented infrastructural power, that is, "the capacity of the state actually to penetrate civil society, and to implement logistically political decisions through its realm" (Mann 1984: 113). The modern territorial state had a single hierarchical centre of decision-making, and the resources to implement its decisions through the territory. This organisation of power made sovereignty into a plausible fiction.

The democratisation of centralised decision-making bodies set normative limitations on their range of autonomous actions (Mann 1984: 114). The state could no longer use its coercive force against its citizens without their consent (or at least that of their representatives). The exercise of the

infrastructural power of European modern states might have been princely at one point, though it would come to be constraint (Mann 1984: 113). Modern *democratic* regimes, for instance, lost some of the (moral) capacity to integrate their societies in similar ways to their predecessors (Axtmann 2004: 266-268). Even if the state ceased to played a less violent a role in the polity (see, however, Balibar 2004a; Bobbitt 2002), the existence of its institutions nonetheless influenced the political practices of its citizens. Modern democracies continue to organise power in hierarchical structures within polities to this day, maintaining a high degree of territorial closure. State institutions remained the focal point of political mobilisation for territorially bounded group of individuals (Axtmann 2004: 262). The reason is, in part, that citizens recognise that the bureaucratic state remains the source of authoritative decision-making over a territory, and continues to have control over extensive resources to implement policies. Both decision-making power and implementation power remain centralised within these polities. The political fiction of sovereignty thus continues to make sense of these democratic states. The political fiction of sovereignty gained practical resonance, which, in combination with the three fictions of peoples, made the three-fold conception of popular sovereignty into a functional heuristic device for political agents.

The centralised organisation of power also influenced the institutionalisation of the people into state-governed economic, democratic, and socio-cultural normative systems. The historical evidence alludes to the fact that the highly coinciding institutionalisation of the people within state borders was in fact not a fortuitous coincidence. As argued in chapter two, rulers' authority relies upon their ability to make the facts of politics align sufficiently with the fictions of popular sovereignty so as to sustain a willing suspension of disbelief among the ruled. In the literature, a debate exists on the intentions of the agents of the modern state in these processes. Some argue that the state pursues legitimation strategies to mask its violence from its citizens (Balibar 2004b; Bobbitt 2002). From a different perspective, Rodney Barker argues that legitimation stories shape elite political actors' identities as much as other denizens, the former therefore act in such a way as to attain reputation (Barker 2001). The rulers are thus *homo nationalis*,

much like the ruled themselves. Again others argue that policies resulting in these normative systems were the product of alternative motivations. The state's homogenisation and rationalisation of educational system, for example, were informed by economic considerations (Gellner 1983). From this perspective, system building was, at least in part, an unintentional consequence of sovereign decisions. The homogeneous implementation of decisions within its territory also contributed to the integration of citizens within this same space. In practice, policies might well have been both intentional and unintentional. Yet the institutionalisation of sovereign states contributed to the creation of coinciding systems because the orders were homogeneous and protected within their 'hard territorialised shell'. The state's coercive institutions played a central role in forming coinciding boundaries of domestic economy, democratic institutions, and processes of socialisation (Balibar 2004b: 23-24; Bartolini 2005; Sleat 2014: 330). The 'sovereign' state's institutions thus contributed to the institutionalisation of the people as beneficiaries, as *demos* and even as nation.

Whether the consequences of processes are always intentional is unlikely. But state elites nonetheless have a clear interest in citizens' continued commitment to popular sovereignty, and the concomitant invocation of the image of the sovereign state. From this perspective, the state's sovereignty came to depend on meeting the criteria of legitimacy, as established by the popular sovereign. The state could, for instance, peacefully generate support by offering citizens' legislative representation and groups' voice (Bartolini 2005: 89). State agents had to meet the appropriate criteria of legitimacy for the 'sovereignty' of the state to remain a plausible and attractive political fiction.[5] As Edmund Morgan observes, rulers engaged in a process of aligning political reality with its legitimating fictions (Morgan 1988: 14). These hierarchical rulers would further shape the concepts to suit their purposes, as alluded to in the first section (Hont 2005). In addition, and to illustrate by way of a counter-example, pluralism, anarchism and communism, as the most influential modern critiques of power formations, explicitly criticise the sovereign status of the state (Stråth 2003), consequently invoking its existence in the process. The organisation of power thus matters, not only to give practical resonance to the fiction of sovereignty, but also because the

agents active in them also shape the normative systems of peoplehood. European integration, so I will claim, has meant the effective reorganisation of decision-making and implementation power in a manner which challenges the fiction of the sovereign state, and has not been without consequence for these systems in making the bonds of collectivity plausible. This dissonance between, on the one hand, the political fictions of people and sovereignty and, on the other hand, institutional reality will inform a condemnation of the multi-faceted conception of popular sovereignty in contemporary Europe.

V - Conclusion

This chapter vindicated the multi-faceted conception of popular sovereignty in Europe's pre-integration polity through a realist analysis. Firstly, a fictional genealogy justified the three-fold conception of popular sovereignty in modern circumstances at the normative level. The sovereign state could make sense of the legitimate political order governing a complex, pluralistic, and enclosed polity. The chapter focussed on the institutional reality providing plausibility to the contemporary conception of popular sovereignty as a heuristic tool despite its reliance on political fictions. The institutional relationships of the legally governed domestic economy, state-centred democratic order, and socio-cultural sphere bound members of the state together, and further reinforced and shaped the relationships between citizens. They also separated European citizenries from one another as each created distinct understandings from within their own historical circumstances. Europe's centralised states formed a hard territorial shell around their populations and institutional systems. The particularity of these arrangements will feature in the next chapter. For now it only matters that the multi-faceted contemporary conception of popular sovereignty could plausibly make sense of the *sovereign state's* legitimacy in these historical circumstances. This analysis of the normative desirability and heuristic plausibility of popular sovereignty offers a sophisticated theoretical understanding of the legitimacy of the modern state. The question before us however, is whether the contemporary multi-faceted conception of popular sovereignty remains vindicated in the contemporary European polity. The next chapter addresses this question by

firstly starting from an institutional analysis, before appraising the heuristic potential of the central fictions, and then its possible vindication at the normative level.

Endnotes

[1] Italics in original

[2] See again Kuukkanen on the distinction between words and concepts (or conceptions) in this instance (Kuukkanen 2008).

[3] Bartolini argues that the limitation of 'exit' options, in combination with a lack of benefits for parts of the population, resulted in the need for the democratisation of states in order to regain legitimacy. Nation-building therefore prefigured democratisation (Bartolini 2005: 89).

[4] The relationship between the development of the modern capitalist economy and territorial administrative consolidation was entangled and complex (Bartolini 2005: 72). In short, the state elite required the funds generated by the market for the consolidation of state building processes, as much as the capitalist agents in capitalist markets required the preconditions offered by the state (Bartolini 2005: 79). The historical developments give purchase to Marxist analyses which posit that a capitalist logic has become intrinsic to the state (Spies-Butcher, Paton et al. 2012a: 133-137).

[5] The lack of clear brute fact strengthens rather than weakens the state (Runciman 2003: 37). A poor policy choice, for example, can be attributed to a government or specific agency rather than to the state. Agents' legitimacy diminishes, but the state's authority remains untouched. The initial illusion of a sovereign state as found in Hobbes' *Leviathan* became an institutional reality despite, or maybe thanks to, its fictional nature.

Chapter 7: Popular Sovereignty in a Novel Political Landscape

> [The European entity] represents a very original attempt at pooling or blending "sovereign" powers, and it also creates central authorities that exert powers transferred to them by the states … [Its relationship to its nation-states] is not a zero-sum game and … the European entity has, indeed, helped the restoration and consolidation of its member states.
>
> Stanley Hoffman, *The European Sisyphus,* 4

I - Introduction

In the previous chapter, I demonstrated how the three conceptions of popular sovereignty could plausibly make sense together in Europe's political landscape before integration. I firstly argued that the contemporary conceptions could complement one another in making sense of the state as a legitimate political order in modernity's enlarged polities. This vindicates commitment to this multi-facetted conception at the normative level. Secondly, I turned to the question of whether this multi-faceted conception could act as heuristic device despite the need for political fictions. I demonstrated how normative systems institutionalized existing bonds of collectivity which inform these conceptions within the 'hard shells' of Europe's territorially organized states. The people as beneficiaries, *demos*, and nation could plausibly guide citizens' appraisals of the state's legitimacy in this institutional landscape. Thirdly, the contemporary conception of popular sovereignty relies upon the political fiction of sovereignty. I argued that the organisation of power turned this fiction into a plausible way to make sense of the state's power. From this perspective, the state agents would furthermore aim to sustain the aforementioned normative systems, because they had a clear interest in sustaining the fiction of the people in order to maintain the related fiction of sovereign authority. The political fictions gained increasing practical resonance, increasing the purchase of the willing suspension of disbelief in the process. The contemporary multi-faceted conception of popular

sovereignty could thus make sense in a desirable and plausible way in these circumstances. In addition, the creation and politicisation of these institutional relationships between citizens made their denial a less plausible prospect, a feature which will become important in the following analysis. I shall argue that European integration has cumulated into changes in the configuration of normative systems and in the restructuring of power. The present-day European polity has gone through a transformation (e.g. Bohman 2004; Cheneval and Schimmelfennig 2013) from its statist predecessor, which impacts the ability of the multi-faceted conception of popular sovereignty to act as heuristic device, and challenges its vindication at the normative level.

This chapter appraises the multi-faceted conception of popular sovereignty, as reconstructed in the conceptual genealogies, in contemporary Europe through a realist lens. The chapter's central argument is that the institutionalisation of the people and sovereignty has undergone fundamental changes due to European integration. The latter engendered numerous processes which have reconfigured the boundaries of normative systems and reorganized power structures. The institutional analysis commences with a parsimonious reflection on the particularity of different contemporary European *state* polities. This section stresses that the European polity consists of very distinct statist institutional arrangements, and cumulates in an analysis of deep diversity within the contemporary European polity. In the aftermath of the Second World War however, the pursuit of economic prosperity set the initial impetus for European integration. This process has cumulated in a significant reconfiguration of the normative systems which create relationships between denizens of the European polity. The boundaries between Europe's economic and democratic statist orders have become porous in parallel to the opening up of the 'hard shell' which bordered European territorial nations. These systems have not yet been replaced with supranational equivalents. Yet, political power has nonetheless been reorganized; states' infrastructural power has been integrated and a second authoritative decision-making centre has been built-up. A two-tier political order has thus emerged in contemporary Europe. The reestablishment of a territorially sovereign state, whether at the European or national level, is an unlikely prospect, as is the concomitant closure of normative systems which

institutionalises the people. Contemporary conceptions of popular sovereignty are therefore unable to act as heuristic tools for assessing the EU's legitimacy in this novel institutional context. Moreover, I argue that this contributes to a condemnation at the normative level, because neither the multi-faceted conception, nor the conceptual structure can make sense of Europe's novel two-tier political order within these historical circumstances.

This argument unfolds as follows: I commence (section II) with a sketch of deep diversity, also referred to as radical pluralism, in Europe. Historical circumstances have resulted in particular institutional arrangements which continue to shape and reflect national consensuses on political legitimacy. The third section (section III) turns to the current constellation of boundaries of the normative systems. The most significant institutional changes at the European level have been the European regulation of increasingly integrated national markets, and the increasing power of the democratic centre for collective decision-making at the European level. As a result, the boundaries between national normative systems have become more porous. Nevertheless, welfare regimes, democratic will-formation processes, and the reproduction of a communitarian identity through public socialisation persist at the national level. The subsequent section (section V) reflects on the institutionalization of sovereignty, or rather lack thereof. European integration has resulted in a significant restructuring of infrastructural power and the multiplication of decision-making centres. National implementation systems have become increasingly interdependent and institutionally linked-up through a set of legally authoritative supranational and transnational institutions. This European governance system also added a second authoritative decision-making centre. The very limited resources at its disposal to implement its decision make it dependent upon the national political orders for their implementation. The decision-makers of these national orders, however, perceive a dependence upon European cooperation, hence they willingly albeit not always enthusiastically comply with their decisions. Reflecting upon the balance of power, I argue that the recentralisation of decision-making to one centre remains an unlikely prospect for the foreseeable future. The final substantive question (section VI) analyses the contemporary multi-faceted conception of popular sovereignty through a realist lens. Starting with a

reflection on the fictions of peoplehood and sovereignty, I argue that the former makes sense at a national level, but both find only very limited, if any, practical resonance at the European level. Sovereignty, so I suggest, has become an implausible political fiction to make Europe's two-tier political order intelligible. The contemporary conception is therefore a poor heuristic tool for making sense of the legitimacy of Europe's political order. Turning to the normative level, I then argue that the contemporary conception of popular sovereignty is ill-suited to making sense of the core characteristics of Europe's transformed polity. The conclusion (section VII) summarizes that the realist reasons for a condemnation of the commitment to the contemporary multi-faceted conception of popular sovereignty in attempts to make sense of the EU's legitimacy.

II - Deep diversity in Europe: Similar arguments, distinct consensuses

Europe's national states' particular circumstances and trajectories continue to shaped institutional and ideational arrangements along national lines to the present day. This section illustrates that historical circumstances continue to shape national polities. This heterogeneity significantly limits the prospects of meaningful integration into a unified European identity. As already indicated several times in the thesis, the national processes of state building, democratisation, and nation-building have followed distinct trajectories. This recognition of variation is essential for appreciating the deep diversity in contemporary Europe. John Erik Fossum uses Charles Taylor's concept of deep diversity to describe the current state of affairs in the EU (Fossum 2003). The notion describes how a plurality of conceptions of the common good and the polity exist next to one another (see also Bellamy and Castiglione 2013). This Taylorian concept captures the radical pluralism between the national units which constitute the European polity. The particularity of each national citizenry's beliefs and institutional arrangements mutually reinforce one another within their national arrangements. This deep diversity is best understood as the product of each European polity having to deal with particular historical circumstances. The relationships between citizens became shaped by:

> "… the structure of the state and the nature of its political regime, the character of class relations, the existence and the sources of any tensions between centre and periphery, the types of ideology and cultural divisions, contingent events such as war, and the available legal and political languages through which the demands of different groups could be expressed" (Bellamy 2004: 3).

Such diverse circumstances have become reflected in the great variations between national institutional arrangements. These arrangements impact and reflect citizens' beliefs on the state's legitimacy, which in turn continue to impact the debates on the Union (e.g. Lacroix and Nicolaïdis 2010b; Schmidt 2006). An in-depth study of this variety would take us too far afield; highlighting some key differences should however illustrate the deep diversity present in contemporary Europe. Before turning to this analysis, it should be recognised that this variation is essential, but it should not obscure the similarity of underlying institutional and normative building blocks (e.g. Bellamy 2004). The three core normative systems which institutionalised bonds of collectivity were intertwined in the shaping of national consensuses on legitimate rule (Bellamy 2013), with knock-on effects between understandings of the polity and of the regime (Bellamy and Castiglione 2003: 12). The same sources of legitimacy are drawn upon in making sense of the state. In practice however, these national systems and consensuses have taken on nationally specific forms which reflect the particularity of their historical context and other contingent factors. To further explore deep diversity, I turn to the institutional organisation of judicial-economic, civic-democratic, and socio-cultural systems in the European countries.

Welfare distribution is one of the most important dimensions of contemporary state-governed capitalist economies. The three main models are the Anglo-Saxon, statist, and corporatist welfare regimes (Esping-Andersen 1990) and which give rise to liberal or coordinated market economies (Hall and Soskice 2001). In the former empires, the sovereign determined the borders of the body politic (Harris 2004: 75-76; Ramos 2004). This sovereign would then transform into the parliament (e.g. Morgan 1988:

17-121). In the British case, the Anglo-Saxon economic model reflected a more individualised approach to allegiance. The benefits of rule are reaped at an individual level, with the state merely ensuring the rule of law. Unlike in Britain, the French state did not rule over a Union. The republican ethos and nation-building efforts instead resulted in a shared culture around the state, even among its dependencies beyond the European continent (Laborde 2004: 47-56). The French state intervenes extensively in the economic and socio-cultural sphere to secure the rights and freedoms of its republican citizenry (Laborde 2004; Stuurman 2004); a practice that continues to the present day, though multiculturalism now poses some challenges to the republican ideal (e.g. Jennings 2000; Laborde 2004). In stark contrast to both approaches, the Dutch welfare system is organised along corporatist lines -- the so-called *Poldermodel* -- which reflect this society's historical divisions: pillarisation, or *Verzuiling* (Stuurman 2004). These markedly different welfare system arrangements reflect different consensuses on the state's legitimate role in providing security and prosperity in modern economies.

The three states would also develop markedly different democratic systems of representation. A consensus democracy would emerge in the Netherlands. In combination with economic corporatism, the state acted in a meditational role between societal interests so as to maintain order in a divided society. The British majoritarian model, by contrast, reflects a clash between two antagonistic classes within society (e.g. Lijphart 2012; Rokkan 1999). The French semi-presidential system illustrates a third mode of democratic organisation. The president represents the unity of the state, whilst the parliament became the representative of Sieyesian sovereign. These three systems all advance a unitary form of organisation for the state. This can be contrasted with other European states which have federal structures, such as Belgium and Germany. In Belgium, this structure copes with the radical diversity of its antagonistic cultural communities. Germany's federal structure, on the other hand, is an institutional response to the high degree of territorial pluralism present since the days of the Holy Roman Empire (Preuß 2004: 39-40). The Scandinavian model, in turn, differs from the aforementioned countries due to its unicameral democratic arrangements. These Northern countries have consolidated democratic structures which

make them quite distinct from Mediterranean, and Central and Eastern European countries. Many of the current member states, however, have had recent experiences with dictatorial and totalitarian regimes. The Spanish consensus, for instance, continues to deal with the historical heritage from the recent Franco period (Closa 1998). A similar historical impact is found in Central and Eastern European countries, which have only recently emerged from totalitarian fascist and communist rule. The two core challenges for these countries have been the building up of institutional capacity to govern a capitalist economy effectively, and the creation and stabilisation of a democratic culture (Góra and Mach 2010). The non-democratic regimes effectively provided basic socio-economic securities; thus, in Marshall's terminology, social rights prefigured political and civil liberties. State consensus became increasingly geared toward the provision of minimal incomes to secure survival: the '*erst kommt das Fressen*' principle (Williams 2005: 61). Democracy is also valued in many of these countries, but it is not deeply engrained in their political culture. The diversity in Europe's representative democratic arrangements reflects diverse historical consensuses on the meaning of democratic legitimacy between countries despite their shared commitment to representative democracy (Bellamy 2013: 507-508).

In all these countries, public socialisation processes were organised within their borders. The rise of nationalism, as argued in the previous chapter, justified the presence of national particularities between countries. The national identity arguably reflects such particularities. Nationhood is, however, not constructed from nothing, but rather relies on particular traits from reality (Costa 2004). The historical circumstances offered diverse materials to construct a national identity. The German and Polish constructions of nationhood rely upon ethnic materials; *ius sanguine* (Góra and Mach 2010: 221-223; Preuß 2004: 25-28). These ethnic self-understandings developed with a relative degree of separation from the state. Yet this insight is unsurprising, as both these states did not come to overlap with their cultural communities for a long time. To paraphrase Ulrich K. Preuß, Germany achieved congruency between state and nation only recently, when it arguably matters least (Preuß 2004: 40). In stark contrast, the French nation

has long been wed to the state. Here, a political civic culture became the source of socio-cultural unity (Laborde 2004). In the British imperial context, elites tended to stress political heritage and underplay the political relevance of ethnic diversity (Bartolini 2005: 88). The borders of the British people would, however, become increasingly understood in terms of nationhood (Harris 2004). This move from less ethnic to increasingly ethnic can be observed across Europe, even in republican France (Laborde 2004). The Spanish case, where the lack of ethnic homogeneity prevents such identification, provides a counter-example to this tendency. The multiplicity of 'micronationalisms' have resulted in dual-identification with state and region, with the state's consensus relying more on benefits than any other criteria to attain legitimacy (Closa 2004). States with more ethnic notions of nationhood, by contrast, gained stronger popular resources within these orders (Greenfeld 1992a: 490), contributing to these consensuses being less dependent upon output and democratic legitimacy. The European polity's persistent deep diversity is reflected in the persistence of these intertwining, mutually reinforcing normative systems in contemporary Europe.

Turning to this more ideational level, the national debates illustrate a high degree of diversity in the narrative utilised. Historical factors have resulted in variations in how polities employ the same multi-faceted conception of popular sovereignty. The statist fiction of sovereignty remains an influential heuristic device to make sense of democratic legitimacy of the Union (e.g. Beetz 2015; Nicolaïdis 2013), though European integration remains understood against national backgrounds (Auer 2010; Pélabay, Lacroix et al. 2010). In these debates on the EU, national consensus on democratic legitimacy influences proposals to improve its legitimacy. Nordic countries focus on the inclusion of civil society, Southern countries on securing benefits, whilst France focuses on political identity (Nicolaïdis and Young 2014: 1410). These historically formed systems shape the relationships between citizens, further solidifying the distinctiveness of national consensuses in Europe. They also continue to shape national debates on the Union's legitimacy. Homogeneous decisions at the European level impact national systems in diverse ways. Prime ministers, for instance, have become more powerful in consensus democracies, because they

negotiate EU-treaties. The French president, by contrast, remains the most powerful politician in the democratic system. The debates on Turkey have further indicated the existence of distinct debates on the need for a European identity and on its substance (Beetz 2015; Delanty 2005). Deep diversity between national polities remains characteristic of the current Europe polity.[1] Nevertheless, these normative systems and power structures have adapted to meet the challenges posed by historical circumstance.

III - The reconfiguration of the normative systems of peoplehood

The second half of the twentieth century was deemed 'the golden age' of the democratic nation-state, though recent developments challenge this form of political organisation (Hurrelmann, Leibfried et al. 2007). In the literature, some of the more prominent challenges include total nuclear war, economic and technological globalization, inter- and transnational political integration, and deep social pluralism. The impact of such diverse changes has been diverse and contested (e.g. Axtmann 2004; Bartolini 2005; Goldmann 2001; Hertz 1957; Lavdas and Chryssochoou 2011; Mann 1997; Sassen 2006). A thoroughly pessimistic analysis holds that these processes "subvert [the democratic nation-states'] political independence, to undermine the collective identity on which it is based, and to weaken its democracy" (Goldmann 2001: 1). These developments have thus become linked to a series of legitimation crises to which state elites have had to respond (see e.g. Bobbitt 2002; Habermas 1984). In this regard, Western democracies face similar challenges, however European political integration has shaped how European countries can respond to them (Rasmussen 2014: 14). The original intent behind European integration was to resolve nation-states' legitimacy crisis after the Second World War. In its aftermath, nationalism had lost some of its persuasive force, and whilst democracy was valued, citizens had more immediate needs. Europe's state elites cooperated to acquire the necessary funds to provide the material benefits which would generate allegiance to democratic capitalism rather than to Soviet Union style communism (e.g. George and Bache 2001: 44-55; Milward 1992; White 2015: 13-14). State elites chose the pathway of integration so as to continue providing security

and economic prosperity. In order to achieve this policy aim, European states opened up their borders in order to create a common market (Bartolini 2005: 116). Various other political considerations have further informed closer cooperation and integration, such European federalism, and increasing problem-solving capabilities. The result has been a reconfiguration of the systems which institutionalise the people and a significant restructuring of power.

This section (section III) and the following one (section IV) describe the reconfiguration of the normative systems and the restructuring of power, respectively, in contemporary Europe. Two methodological issues of a more technical nature warrant brief treatment. First, this section partly draws upon Bartolini's *Restructuring Europe* (Bartolini 2005: 116-176; 177-247); more recent academic and EU publications have however been consulted in order to ensure that the account remains up-to-date. Secondly, historical explanations and specific policies feature more prominently compared to the previous chapter, the reason being the lack of agreement on the nature of the European polity. The aim is not to reproduce a causal history from the European Coal and Steel Community (ECSC) to the current landscape.[2] Historical explanations instead feature to bolster the claims made in this description. Additional empirical details further substantiate my claims. My central claims are, firstly, that the normative systems which institutionalise the people have been opening up, but they remain primarily organised at the national level. Still, judicial-economic and civic-democratic systems have become a reality at the European level. In section IV, I claim, secondly, that the reorganisation of the political order has been the source of this reconfiguration, and the underlying balance of power between decision-makers renders any significant changes therein unlikely. In the rest of this section, I will again present the normative systems associated with the political fictions of the people as beneficiaries first, then as *demos*, and finally as nation.

The state's competent coercive-administrative infrastructure bound subject-citizens within the state-governed domestic economy. Historically, the state emerged as the military defender of, and judicial authority over, a

particular territory. This state's enforcement apparatus was instrumental in containing the forces of capitalism within its territorial borders. Domestic markets generated the economic prosperity essential for the necessities and conveniences of life. In the nineteenth century, the state became responsible for more redistributive functions so as to increase the material well-being of citizens. Europe's commercial night-watchman states became less warlike and more welfare oriented. European integration is often attributed an essential role in both pacifying the warlike states and enabling welfare regimes on the European continent in the 20th century. This process resulted the creation of institutions at the European level, which replaced some national normative systems.

The normative systems that ensure the protection of individuals' safety from external threats remain institutionalised at the national level. The EU has nevertheless taken on certain roles in the provision of safety. Policy areas associated with external security have been institutionalised at the European level. The Union's Common Foreign and Security Policy (CFSP) suggests the creation of an enforcement apparatus which is institutionalising a European bond of security. The European External Action Service (EEAS), on the other hand, is a European diplomatic core which represents Europe's common good abroad, and consequently institutionalises an external diplomatic identity. Yet national interests remain present within this institution. The EEAS treaty reflects this tension between internal division and external unity (Vooren 2011), because intergovernmental interests set the goals for the eternal representatives to pursue. Despite this intergovernmental structure, Europe has been given, at least, a degree of institutional agency. Furthermore, the EU's Rapid Reaction Force gives external military agency to the Union, however it is still fairly limited in both size and scope of action. This force is more a policy tool than an apparatus against existential threats to the European polity. Broadly, the CFSP indicates a willingness to cooperate in the acknowledgement of limitations in the individual agency of states abroad. Recent history has however made it apparent that state interests dominate foreign policy (Bartolini 2005: 201-202). European states' geopolitical interests diverge to such an extent that even a 'declaratory' unity has been hard to establish (Bartolini 2005: 201; Meunier and Nicolaïdis 1999: 478). Military

defence of the European continent continues to rely on cooperation between nationally organised armed forces. European states have pooled and created some additional military and diplomatic resources rather than integrating them into one normative system. In short, common security remains largely institutionalised within the borders of national states, but with some supranational additions.

The normative systems responsible for internal security, by contrast, have become increasingly integrated in Europe. The accompanying economic integration meant an increase in cross-border activity, which created new challenges for law enforcement agencies. In response, resources have increasingly been pooled to pursue criminals across member state borders and to monitor entry into the Union. Enforcement agencies pursue common policies regarding immigration, drugs, human trafficking, and also terrorism (Bartolini 2005: 206-207). Bartolini observes that "the traditional functions of border-crossing controls have moved rapidly from being the exclusive competence of member states to being an intergovernmental policy, and, finally, at least in part, an area of Community competence" (Bartolini 2005: 208). A 'network of infranational bureaucracies' of intelligence, police, and prosecuting judiciary has been erected (Bartolini 2005: 210), that is to say, national agencies cooperate extensively under the guidance of umbrella institutions. The 'back office' of policy-making has increasingly become trans- and even supranationalised; the 'front office', however, remains organised at the national level. So despite state and judicial systems entering a phase of profound change (Bartolini 2005: 211), European judicial institutions continue to rely on member states for law enforcement (Sangiovanni 2013: 229). The normative systems of internal enforcement of the rule of law remain national, but they have gained a strong transnational dimension in order to address the challenges of (economic) borders opening up between European states.

The normative systems associated with economic prosperity have arguably undergone the most change. At their heart lies the formation of a common market, which has opened up the boundaries between Europe's economies, and erected a common economic boundary between EU-citizens and the rest of the world. Economic integration, or more precisely the creation of a common market, was originally understood in terms of a project designed

to attain both peace and economic reconstruction (Milward 1992; White 2015: 13-14). The Single European Act (1986), however, changed economic integration from a strategy to the creation of transnational connections between national economies, and then to the economic rationalisation of capitalist production structures within the Union. The aim of market *integration* is to make Europe economically competitive on the world stage (Bartolini 2005: 181). To enhance Europe's economic competiveness, policies were implemented for, on the one hand, the creation of a customs union and, on the other hand, the harmonisation of Europe's economies. The former institutionalises a single border around the European market, whilst the latter aims to destroy the internal boundaries between the states' markets. The Union has moved much further in the removal of internal boundaries and setting up external ones than any previous customs unions (Bartolini 2005: 185). The accumulation of these policies has resulted in a pan-European normative system of commercial prosperity.

Regulatory institutions govern the pan-European market. The essential liberal market-making policy domain of competition law has effectively been centralised at the European level. The Commission acts autonomously as a federal institution (Bartolini 2005: 184), and the Court of Justice of the European Union (CJEU) enforces these policies authoritatively within Europe's legal order (Bartolini 2005: 198). Since the onset, the policies aimed at ensuring economic integration were linked to a legal order which enforced common decisions among multiple member states (e.g. Weiler 1997). This order focused primarily on the protection of EU-citizens' four economic liberties (Bartolini 2005: 222-226), though its decisions tended to favour further integration. Substantively, neo-liberal competition law reigns over most markets, with the structural exception being the Common Agricultural Policy (Bartolini 2005: 186). This attributes the European economic design a (probably unintentional) physiocratic character. The Economic and Monetary Union (EMU) is the most far going process of integration of European markets. Monetary sovereignty of states passed to the European Central Bank (ECB) so as to create a fully integrated financial market (Bartolini 2005: 195). The ECB acts as a 'federal agent' within Europe's market governance regime, and possesses unprecedented independence in comparison to its

national predecessors (Bartolini 2005: 196; see also Streeck 2014). Its sole policy objective is price stability. To achieve this aim, this institution has only been given only macroeconomic monetary tools, like control of foreign exchange rates and lending money to countries. The EU also created an external economic identity by delegating authority for trade negotiations, to a large extent, to the European Commission (Meunier and Nicolaïdis 1999: 479-488). The trade commissioner represents the Union in most international trade negotiations. National representatives, however, determine the position and bargaining space of the Commissioner in negotiations, which has enabled states to regain certain competences over past years (Meunier 2000; Meunier and Nicolaïdis 1999). This type of government has been described as 'executive federalism' (Crum 2013) because a mix of technocratic and national-executives are the political decision-makers. What matters for now is that this normative system creates relationships between citizens within the European polity.

The EU regime has only limited policy tools at its disposal, creating at best very thin relationships between citizens. Many economic relationships remain institutionalised at the national level. To set the tone of this paragraph, Andrea Sangiovanni observes that "… the EU, on its own, does not have the financial, legal, administrative or sociological means to provide and guarantee the goods and services necessary to sustain and reproduce a stable market and legal system" (Sangiovanni 2013: 229). In effect, EU-institutions only have only a limited range of macroeconomic instruments to pursue benefits for 'their' citizens, which are arguably skewed toward the Northern trade-oriented economies (Streeck 2014). European institutions have neither levying capabilities nor direct control over any budgets. Taxation policy is the most important budget policy for monetary policy. Contributions from national governments fund the EU, as well as a fixed percentage of customs and value added tax (VAT). The overall rate of VAT has been harmonised between European levels, but supranational institutions neither collect nor set a flat rate for the Union (Bartolini 2005: 191-194). Furthermore, supranational institutions cannot officially exercise direct control over national budgets, the EU-regime can therefore not use budget policies to manage the European market. Notwithstanding some treaties, policies, and minor funds, the EU also

has no policy instruments to manage employment directly (Bartolini 2005: 190). The ECB has more recently influenced national policy, but only through a set of emergency powers (Streeck 2014: 214).[3] The pan-European economic system governs a limited range of aspects compared to national systems, however it does do so authoritatively. This normative system therefore institutionalises bonds at the pan-European level.

The normative systems of compulsory redistribution of economic prosperity, however, remain organised at the national level. European states also continue in their role as the primary providers of education, social insurance, and healthcare for their citizenries. The EU lacks redistributive mechanisms to compensate for the negative impacts of restructuring the European market (Bartolini 2005: 197-198). European 'welfare benefits' are insignificant in comparison to the state, and are deeply contested among member states (Bartolini 2005: 226-233). The European regime does not offer anything approaching a normative system of public goods and welfare redistribution to take its place (Bellamy and Castiglione 2013: 217-218). The state level thus remains the most important site for employing coercion and redistribution to resolve of societal conflicts in the foreseeable future (Axtmann 2004: 271; Stråth and Skinner 2003: 2). The pan-European economic regime challenges the autonomy of national regimes, because it impacts the range of policy options, and at times even enforces its decisions upon the national regimes. Competition law, for instance, results in an opening up of national judicial-economic systems (Bartolini 2005: 235-237). The impact of these laws is significant, such as in the realm of healthcare, and furthermore illustrates the continued heterogeneity of Europe's judicial-economic orders. Compulsory national welfare regimes significantly shape the individual impact of Europe's macroeconomic policies on citizens. Similarly, the implementation of macroeconomic policy at the national level results in diverse outcomes in different state polities due to the "heterogeneity of socio-economic, and productive structures" (Bartolini 2005: 198; see also Bellamy 2013: 506). Normative systems of prosperity continue to bind citizens together within domestic polities.

The normative systems that create relationships of security and economic prosperity between citizens remain largely organised within the

borders of the European states. Europe's legally governed market constitutes a European normative system which creates new relationships between EU-citizens. This system combines internal market integration with external economic interest representation. The normative systems of the European market and the national economies are asymmetrical systems. The European regime should generate more economic prosperity than the states would achieve independently. The European system therefore creates bonds between European citizens, but it continues to rely on the state's infrastructural power, which funnels this commercial prosperity (or lack thereof) down to the individual. These nationally governed domestic economies transform European commercial results into a national experience of economic suffering or prospering rather than a European one. The legal and economic institutions associated with output legitimacy remain largely organised at the national level, but the common pursuit of commercial interests at the European level results in an opening up of national systems. The effects of European systems at the individual level, therefore, remain inflected along national lines. A European system of peace and prosperity has emerged, which gives plausibility to citizens as beneficiaries. However, these individuals remain institutionalised within heterogeneous normative systems at the national level. European supranational and transnational integration takes place, but deep diversity also persists.

The democratic bond of collectivity found its institutional plausibility in democratic procedures which enable stable self-government, despite the competition of different groups for scarce resources. European integration has resulted in the institutionalisation of EU-citizenship and pan-European elections. Continuous diplomatic and political negotiations have been instrumental in the achievement of peace on the European continent (e.g. Middelaar 2009; Rosamond 2000). In recent years, the EU-regime institutions have taken on an increasingly statist character. This decision-making centre governs authoritatively over the European polity. The Commission, Councils, and European Parliament (EP) have become understood as Europe's government, mirroring to some extent national democratic arrangements (Bartolini 2005: 160-165). Furthermore, the Euro-bureaucracy resembles a

quasi-ministerial arrangement, drafting rules and regulations which are directed at national structures (Bartolini 2005: 136-141). The European assembly, on the other hand, became the EP, a shift which implies the existence of a European *demos* (Middelaar 2009: 379-385). This arguably symbolic shift would become more important as the EP gained further powers within European decision-making procedures. Institutional reproduction at the European level has not been identical to any national arrangement. Key normative questions are whether it should mirror a national system, and if yes, which of Europe's (or other countries') democratic systems should act as its model. Leaving these questions aside, the democratisation of Europe's decision-makers centre has resulted in a normative system of democratic procedures at the European level.

The ascription of citizenship created civic relationships within the territorial borders of the constitutional state. Historically, the constitution limited the state's power by protecting liberties and ascribing rights to citizens against the state. Europe's 'constitutional court', by contrast, empowered the European decision-making centre. From a historical perspective, the constitutionalisation of the Union is rightfully characterised as unusual (Bartolini 2005: 160-165). And as mentioned before, the main role of the constitutional court has been to protect the four economic freedoms, in line with the early modern liberal state. The lack of coercive policing power has long been matched by a lack of European rights. The recently ratified *Charter of Fundamental Rights of the European Union* does restrain the Union *and* Member State's powers.[4] The treaty, however, represents a tool for the supranational enforcement of intergovernmental agreements. As Article 52 clarifies, the Charter's origins lie in the (intergovernmental) treaties, which it may not contradict. EU-citizenship has furthermore meant the attribution of rights to citizens in virtue of being part of Europe's legal order. EU-citizenship institutionalises a pan-European boundary between '*communautaires'* and *'non-communautaires'* (Bartolini 2005: 222). Among others, asylum seekers, non-European wedding partners, and visiting students are excluded from the democratic life of the Union. These democratic institutions create relationships between European citizens, and establish an external boundary between them and 'outsiders'. A civic-democratic system has been erected at the

European level. That being said, the creation of an external border has not been paralleled by the destruction of internal democratic boundaries between national *demoi*. EU-citizenship is a transnational institution which is contingent on national citizenship. The most important upshot is that European states set the requirements of European citizenship on a national basis (European Council 2010: Art. 9, 20). Nicolaïdis rightfully characterises this process as the Europeanization of national citizenship (Nicolaïdis 2013: 365). The limitation of EU-citizens' rights in other European states further reflects how it is a transnational rather than a supranational status. European citizens residing in other member states, for example, can be excluded from employment within sensitive state institutions (European Council 2010: Art. 45). The most common areas of exclusion are those associated with national sovereignty of the state, such as the military, police, and high civil service positions (Bartolini 2005: 223). National citizenship remains in place and underpins EU-citizenship. The latter does create a normative system of citizenship at the pan-European level.

An essential modern democratic right is to vote for democratic representatives. Democratic voting rights are an essential part of citizens' empowerment within the representative system of democratic will-formation. The EU-citizens can vote for their representatives in the EP. The European 'electorate', however, only participates in nationally organized elections to decide upon their national representatives in the EP. European elections constitute a transnational process of aggregate will-formation, which contributes to European elections remaining second order ones (Bellamy 2013: 506). EU citizen's right to vote is therefore limited at the national level. EU-citizens can vote in European and municipal elections in all member states. But those residing in another member-state are not allowed to participate national elections. After consideration, the evidence suggests that even the transnationalisation of public spheres is very limited (Bellamy 2013: 506; Cheneval and Schimmelfennig 2013: 336-337). A European public sphere to debate in and keep decision-makers to account does not exist, a lacuna which I will address in more detail in the next section. It moreover means that democratic closure remains at the national level, thus bringing transnational processes of interest-formation into competition with pan-

national ones (Bartolini 2005: 248-308; Eder 2014). EP elections and EU-wide empowerment in municipal elections creates further democratic relationships between EU-citizens. Despite these processes, national democratic will-formation through elections and deliberation in a public sphere remain a reality in the European polity. Citizens, therefore, also remain part of national civic-democratic systems.

In conclusion, the current European polity consists of normative systems at the European and national level. European integration has cumulated in the formation of a second decision-making centre, which has been increasingly democratised. The number of policy areas over which the European regime could make autonomous decisions has expended over time. The EU, as it is currently structured, has a significant range of issues on which it can make decisions that take effect across the entire European polity. In return, EU-citizens have gained rights and liberties at the pan-European level. The boundaries between national democratic systems opened up via this European level. European democratic institutions continue to only reflect transnational rather than supranational relationships, because the boundaries between the domestic normative systems remain in place and citizens partake in the European democratic system through national arrangements. In European elections, EU-citizens elect national representatives within nationally organised elections after having debated issues in national public spheres. This means that national elections do not secure the free participation on equal footing of other EU-citizens residing in the territory. European citizens have still gained democratic relationships absent in other intergovernmental regimes, and boundaries which institutionalise democratic bonds between normative systems have remained in place. The entire normative system associated with the *demos* -- a constitution, electoral representation, and deliberation in a public sphere -- are only institutionalised at the national level. The European system is a partial secondary spin-off of this order. The civic-democratic relationships between citizens remain an institutional reality primarily at the national level, but a democratic normative system has materialised at the European one.

The final political fiction of the people as a nation was the product of systems of public socialisation. These processes integrated citizens into a symbolic order. The state's nation-building efforts resulted in the emergence of a national identity within its territorial boundaries, which have to some extent become a self-reproducing cultural artifice within the national public sphere. Citizens thus experienced socio-cultural relationships with one another, despite varying degrees of diversity. Before turning to the normative system, I will first reflect on the possible outcome; the production of a communitarian identity at the European level. The outcome at the European level has been very limited, at best. EU-citizens do not identify, or only weakly, as Europeans (Bellamy 2013: 506; Cheneval and Schimmelfennig 2013: 336-337). The creation of democratic decision-making processes might act as the germ of a normatively more desirable and rational European identity (Guibernau 2011). It does not, however, generate the characteristic associative sentiments which result in social legitimacy. These institutions effectively generate a sense of European identification, but its indicators remain abstract and universalistic rather than communitarian commitments (e.g. Delanty 2005: 19-20). Marco Antonsich concludes, for instance, that "EUrope still remains subordinate, in people's minds, to the sentiment and the logic of national belonging" (Antonsich 2008: 517; original capitalisation). Moreover, identification with the nation remains a sociological reality within Europe's political landscape, as predicted by early theorists of regional integration (Mitrany 1975) and European integration in specific (Deutsch, Burrell et al. 1968). The exception which proves the rule is the group of bureaucrats active within European institutions. European supranational elites share a European identity (Shore 2000) through both a pre-disposition to, and subsequent socialisation into it (Bartolini 2005: 137-138). Nevertheless, the vast majority of citizens do not identify with a European community.

This lack of a communitarian identity can, in part, be explained by the lack of symbolic resources. Classic social and historical markers utilised in nation-building are not only hard to delineate for the Union, but often contested (Bartolini 2005: 213-214). The EU-elite attempted traditional examples of nation-building, such as the introduction a flag, anthem, and currency (Bartolini 2005: 216-217; Middelaar 2009: 313-335). Nation-building

has, to some degree, historically relied on the invention of such traditions to create a shared identity (e.g. Hobsbawn 1983). A shared heritage has, for instance, been recognised in the preamble of the constitution (Eriksen and Fossum 2004). Appeals to this heritage, however, are both deeply contested (Delanty 1995) and deemed undesirable for politico-ethical reasons (Bartolini 2005: 213-214). Another candidate is the 'European experience' with totalitarianism, which was fuelled by initial integration efforts. This experience, however, has been diverse, with Eastern and Central European countries only recently becoming democratic. Language might offer one of the least normatively contested markers, but Europe's diversity of tongues makes it an unlikely candidate (Bartolini 2005: 113). Citizens might be proficient in English -- the language of another hegemonic political power -- but this foreign language functions as a technical tool for communication (Bartolini 2005: 213; Goldmann 2001). The lack of symbolic resources to politicise can, in part, explain the lack of success in creating a European identity.

Finally, and most importantly for this analysis, the normative systems for public socialisation into a communitarian identity are lacking on a pan-European scale, European elites lack the institutional infrastructure for nation-building. In mass societies, a public sphere became the substitute for face-to-face interaction (Anderson 2006). These institutions are also important for democratic deliberation, but they do not exist at a pan-European level (Díez Medrano 2010; Goldmann 2001: 101-104; Risse 2010). Furthermore, vernacular languages remain institutionalised and protected at the national level (Bartolini 2005: 213). The lack of even a transnational connection between public spheres implies national frames continue to shape European citizens' perception of European integration. Modern communication technologies, such as the Internet, also complicate this process by making fragmentation likely and cultural exit easier. For the time being, the normative system of socialisation necessary to the creation and reproduction of a communitarian identity at the European level is neither present nor likely to emerge. The European political regime also has very limited control over historically important policy domains. A traditionally influential nation-building tool, for instance, has been education policy, an area over which the EU-regime has no significant control is over national curricula, and which would

allow it to shape common frames (Bartolini 2005: 216). The European Erasmus program, for example, finances student exchanges, but it does not directly impact curriculums (Bartolini 2005: 217). Such cultural exchanges remove internal boundaries and intensify interactions, thus creating a social infrastructure. Yet this normative system is primarily transnational as students do not enter into a 'European administrative pilgrimage' (Anderson 2006), but temporarily visit another European country. This supports the strong evidence which suggests that national public spheres exist and are likely to persist in the foreseeable future (Axtmann 2004: 267; Cheneval and Schimmelfennig 2013: 336-338). The reproduction of historical processes of nation-building at the European level has become a highly elusive prospect against this institutional background (Bartolini 2005: 217). A socio-cultural system at the pan-European level has not emerged, let alone a communitarian European identity. Socio-cultural normative systems instead continue to reproduce boundaries between Europe's national polities. This final observation further bolsters the analysis of deep diversity. The claim of identitarian relationships at the European level is highly disputable, whilst national claims continue to shape the European continent.

In summary, this institutional analysis reflected on the normative systems at the European level. Firstly, the normative systems of security and economic prosperity have developed asymmetrically in the European landscape. Integration resulted in a normative system which created relationships at the European level. The heteronomy of national orders, however, significantly altered the local impact of the European system along national lines, even while the boundaries separating national states have been opened up. An outer border has furthermore been reproduced at the European level. Security, welfare, and even judicial enforcements, however, remain primarily institutionalised at the national level. Secondly, democratic systems have to some extent multiplied with the creation of democratic relationships between EU-citizens by a second European democratised decision-making centre. Democratic relationships at the European level are institutionalised in a transnational manner because EU-citizenship is a transnational status, and citizens elect national representatives into the EP. A

democratisation of the European tier of the political order has effectively taken place along transnational lines. A second civic-democratic system has become a 'European' institutional reality. It must be remembered, however, that democratic relationships remain first and foremost organised at the national level, where citizens engage on an equal footing in processes of democratic will-formation. Economic and political integration thus resulted in the development of relationships between citizens at the European level. The same is not true of socio-cultural systems. Any 'European' identity reflects the institutions of the previous two orders, both of which rely upon universalist values. These values lack the particularity which can give rise to a communitarian identity. The lack of public processes of socialisation makes the emergence of a particularistic system, *pace* the historical role of the state in nation-building, into an elusive prospect. One important conclusion is also that the social precondition of a shared sphere of democratic will-formation is lacking in these historical circumstances. As argued in the previous chapter, the public sphere accommodates the dual-process of democratic will-formation and public socialisation. This public forum shapes and democratically justifies particularistic decisions which guide state policies, which in turn shapes the economic regimes. In contemporary Europe, the population remain embedded in intertwined, mutually reinforcing judicial-economic, civic-democratic, and socio-cultural relationships at the national level. Pan-European relationships exist in contemporary landscape, though they are dependent upon these national relationships.

IV - The reorganization of political power in the Union

Having described the deep diversity and the reconfiguration of normative systems of peoplehood in the Union, I turn to the effective reorganisation of political power within the European polity. Grasping the latter is vital for appreciating the implausibility of the political fiction of sovereignty. It is also essential for coming to grips with the elusiveness of reproducing the same, or even a very similar, institutional context as before European integration, at either the national or European level. One important conclusion of this analysis is that the transformed European polity is likely to persist in the

foreseeable future. This is essential in realist appraisal of the contemporary conceptions of popular sovereignty's ability to act as a heuristic device with which to make sense of Europe's political order, but it also implies that transformed historical circumstances act as new realist constraints on analysis at the normative level. This analysis commences with a description of the organisation of autonomous decision-making and (infrastructural) implementation power in contemporary Europe. The EU is neither an intergovernmental nor a supranational regime. William Wallace famously describes the European Community as less than a federation, more than a regime (Wallace 1983), a description which continues to capture the current state of affairs. The EU has been labelled an empire (Marks 2012; Zielonka 2006), regional state (Schmidt 2006), regulatory state (Majone 1996), and post-sovereign state (MacCormick 1996; 1997), to name but a few. These models share the understanding that the 'European entity' is not a state but a political order with marks of sovereignty (Balibar 2004a: 198-202; Hoffman 1995: 4). The current political order is, so I will argue, best characterised as having (i) two relatively autonomous decision-making centres relying on (ii) an integrated multi-level governance regime. The first characterisation describes the lack of a single sovereign decision-making centre, whilst the second captures the organisation of implementation power.

The first characteristic of Europe's political order is the existence of two-tier order without an existing consensus on the hierarchy between them. In other words, two relatively autonomous decision-making centres have emerged in European polity. With the question of sovereignty undecided (Glencross 2012; White 2015), some argue that the European landscape should be characterised as anarchical (Dobson 2006: 512), whilst others argue that ambiguity better captures the institutional reality (Glencross 2012). These characterisations are accurate in so far as, empirically, no sovereign decision-making centre exists within the Union. In this context, supranational and intergovernmental decision-makers compete for autonomous decision-making power in Europe's political landscape (e.g. Fabbrini 2005; Zielonka 2006). The relationship between them has been characterised as a struggle (Bickerton 2011: 669; Glencross 2011: 356-359; Middelaar 2009); the guardians and masters of the treaties represent two mindsets competing for

authority (Kröger and Friedrich 2013; Middelaar 2009). Supranational elites, which includes both technocratic (ECB, CJEU) and democratic (EP and Commission) institutions, claim authority in the name of an overarching European interest or people. They even pursue legitimation strategies which reflect statist logics (e.g. Eriksen and Fossum 2004; Middelaar 2009: 293-422). National decision-makers nonetheless retain much of their decision-making power with regard to the Union. European integration processes have effectively been a series of intergovernmental treaties (Bellamy 2013: 504) in which state power matters (Eriksen and Fossum 2004: 438). Intergovernmental agents even continue to claim sovereignty despite strong empirical evidence against it (Aalbers 2004; Ham 2001). National representatives nevertheless remain, or arguably have become, less willing to cede substantial decision-making powers to the EU due to, amongst others, national electoral considerations and sincere commitments to national sovereignty. Intergovernmental executive decision-makers are embedded in governance structures at the European level. Nation-states have, moreover, become member states as a technocratic mindset disciplines the negotiations between state representatives in European policy formation processes and treaty negotiations (Bickerton 2013; Schimmelfennig 2004). In summary, decision-making power has become restructured within the European polity into a two-tier order, though the question of sovereignty remains largely undecided, resulting in a degree of competition between sets of decision-makers.

The second characteristic of the European political order is the interconnectedness and integration of implementation power in the Union. The European decision-making centre relies on an increasingly integrated network of national infrastructural power to implement its decisions. European supranational and transnational institutions can make decisions with a certain degree of autonomy within particular policy areas. Once legislation (regulation and directives) has been approved, states and their citizens should comply. The supranational tier of Europe's political order, however, depends on a network of national courts and bureaucracies to implement these decisions (Bartolini 2005: 136-141; Sangiovanni 2013: 229). The decision-makers at the European level cannot directly penetrate the everyday lives of 'their' citizens.

Even in domains in which European institutions have unrivalled autonomous competences and expertise, such as competition policy, they remain dependent upon Member States' territorially organised infrastructural power for implementation. Andrea Sangiovanni persuasively argues that the states could govern without Europe, but Europe could not govern without the states (Sangiovanni 2013: 229). The state's coercive force, however, tends to be useless for resisting already 'delegated' powers to European decision-making centre. As Bartolini observes,

> "coercion is not the only way to create dependency. If it is true that centres can no longer be created and sustained though coercion, it is equally true that centre formation and the dependencies that it creates can no longer be resisted with force, either" (Bartolini 2005: 125).

The characterisation of the EU as a system of multi-level governance (Marks, Hooghe et al. 1996) captures both the integration of implementation power and the interdependence between levels. Their co-dependence also contributes to the elusiveness of the re-establishment of a sovereign statist order in Europe.

Both European federalists and nationalist communitarians have advocated the reestablishment of sovereign decision-making power in the European polity. These solutions attempt to realign coercive order, and to some extent the normative systems, to a pre-integration constellation. Neither solution, however, is a very likely prospect in the foreseeable future. First, the federal dream has endured since the early days of European integration (Burgess 2009; Spinelli and Rossi 1941). A sovereign federal European state should guarantee security and subsequently economic prosperity (Morgan 2005a; 2005b), re-establish democracy (Bickerton 2011), and reflect a European identity (Siedentop 2000). These arguments tend to recognize that a democratic European people is a tall order, but nonetheless deem it necessary to reconcile pan-European governance with democracy (Bickerton 2011: 680).[5] Glyn Morgan argues that the three principle objections to a sovereign European state -- desirability, behaviouralism, and institutional design -- can be overcome (Morgan 2005b: 205-206). His arguments seem

only feasible in the very long run. More importantly, the central role of member states' executives in the institutional design and direction of the Union make a sovereign European state a rather elusive prospect. These intergovernmental elites will protect their decision-making power and sources of authority; they are a self-identifying people. Maybe "some form of federalism" could create a legitimate democratic European polity (Bellamy and Castiglione 1997: 423-433), but a federal state is rightfully characterized as utopian (Horeth 1999: 263). The expectation of a European federal state is, therefore, an implausible expectation for the Europe's political order.

On the other hand, nationalist communitarians argue that European integration has undercut the sovereign authority of Europe's national democracies (Malcolm 1991). The proponents of this model argue that sovereignty should remain with nation-states (Bellamy and Castiglione 1997: 433-441). Their point of departure is often the 'no-*demos* thesis' (e.g. Bellamy and Attucci 2009: 212-214; Friese and Wagner 2002: 345-348). These nationalists place the right to rule firmly with Europe's nation-states because it is the site of a communitarian identity. As a result, the EU as an organisation should rely upon indirect legitimacy through sovereign representatives. The most prominent communitarian (Bellamy and Attucci 2009) or cultural theories of the polity (Friese and Wagner 2002) thus dismiss the possibility of a legitimate European political order (e.g. Grimm 2009). This ideal, however, is a *politically* unviable option. Although technically possible, member states would have to give up on a range of benefits (Sangiovanni 2013: 229), on top of which "the costs of unilateral withdrawal for recalcitrant members seem to have grown exponentially" (Bartolini 2005: 125). Moreover, many perceive a firm interest in European cooperation in a global economy (e.g. Habermas 1999; Majone 2005). The retrenchment to national sovereign statehood is not impossible, but the political will seems absent in most European countries. Some member states might choose to leave the Union, such as the British referendum on membership, or they might be forced out of certain agreements, such as the Greek exit out of the currency Union. Still, Marcus Horeth is right to characterize the reintroduction of fully sovereign European states as an anachronism (1999: 265). In both cases, the reestablishment of a

political order which can give institutional resonance to the political fiction of sovereignty ends up being an unlikely prospect.

This situation also makes significant boundary reconfigurations unlikely. The current constellation of normative systems is likely to remain largely in place because it reflects the European balance of power. First of all, the commercial system reflects the perceived shared interest in a limited degree of European economic integration. The coordination between systems for internal order reflects the interdependence which emerges within a system of multilevel governance. Second, the multiplication of democratic systems reflects the perceived necessity for a two-tier political order which requires democratic legitimacy at both levels. Finally, the persistence of national identities mirrors the continued influence of Europe's nation-states in integration processes. This identity finds institutional resonance in both Europe's compulsory redistributive systems and its national public spheres. At a sociological level, a national identity would generate the solidarity and trust required to sociologically legitimate the extensive infrastructural power of this political regime, as even many technocrats agree (e.g. Scharpf 1999). Radical diversity remains a cultural and institutional reality within the European polity. The likely persistence of the current balance of power, therefore, strongly suggests that the current organisation of power and configuration of normative systems of peoplehood are also likely to persist.

This argument is not strictly speaking causal, but rather that the processes of reconfiguration and reorganisation are co-produced in Europe's contemporary historical circumstances. This process is similar to the impact of the sovereign state on the formation of normative systems within its borders. As highlighted in the first and second chapter, one cannot predict the transformative acts of rulers nor of other historically contingent raptures, including revolts. Such events have the power to reshape the balance of power and cause another reconfiguration of normative systems. While accepting historical contingency, the above analysis indicates that significant changes in Europe's contemporary political landscape are elusive. Its two-tier political order is therefore likely to persist. State representatives remain in control of the European integration process, but exit costs (or at least the perception thereof) make disintegration an implausible prospect. Even though

intergovernmental decision-makers have become more hesitant, and even sceptical, to delegate powers to supranational institutions (e.g. Meunier and Nicolaïdis 1999), the perceived interests of economic integration contribute to a sense of dependency on the European regime, the only entity capable of enforcing decisions within a deeply diverse polity. This three-fold institutional analysis shall inform the realist appraisal of the contemporary multi-faceted conception of popular sovereignty which dominates the EU legitimacy debate.

V - A condemnation of popular sovereignty in contemporary Europe

In this thesis, I reconstructed the contemporary conception of popular sovereignty from the canonical arguments which inform distinct criteria of legitimacy. The previous chapter vindicated the present-day multi-faceted conception at the normative level because it can make sense of the legitimacy of the modern state in relation to three key features of modern enlarged polities: their complexity, social pluralism, and closure. I then argued that this conception could plausibly act as a heuristic tool because the political fictions of the people and of sovereignty found practical resonance in the European polity before political integration. The highly coinciding borders of the state and these normative systems resulted in the creation of multiple institutionalised relationships between citizens. The conception could therefore guide political agents in their appraisal of the state's legitimacy, using the criteria of output, democracy, and identity simultaneously. In this final analysis, I shall reverse the order of the realist analysis – placing plausibility before desirability – because, firstly, the institutional context also sets the stage, to some extent, for the normative analysis. The normative analysis requires that one takes into account historical circumstances; the realist constraint. The above analysis implies that these features have changed in contemporary Europe. Deep diversity constitutes a new constraint, whilst the two-tier political order is a new object to make sense of. Still, the reflection on desirability requires a further degree of abstraction to do justice to the normative impetus of the realist method. My analysis nevertheless results in a condemnation of the contemporary multi-faceted conception of popular sovereignty at both levels. The first task is to analyse the plausibility

of the political fictions of the people and of sovereignty in making sense of the EU's legitimacy, the success of which depends on their practical resonance. This analyses focuses on the four political fictions at the heart of the contemporary conception of popular sovereignty; namely, the people as (i) beneficiaries, (ii) *demos*, and (iii) nation and (iv) (state) sovereignty. I shall relate each fiction to the relevant types of relationships and organisations of power, looking at both the European and the national level. In a nutshell, the three fictions of the people retain a high degree of plausibility at the national level, but fail to achieve a similar degree of resonance at the European level. The concept of sovereignty does not retain much institutional plausibility at either level.

Starting with the beneficiaries, the plausibility of this conception of the people relies on it being part of a judicial-economic system. The modern state shaped, protected, and advanced citizens' security and economic interests, and bound them together into a society of mutual beneficiaries. National welfare states further bound their polities through their compulsory redistribution systems. In present day Europe, states continue to maintain these normative systems within their territorial borders. In addition, states maintain policing apparatus to maintain internal order and provide security from external threats. Integration has resulted in the creation of a normative system of security and economic prosperity at the pan-European level. The Union has a diplomatic service of sorts and even a rapid response force, but it also cooperates closely in the realm of law enforcement and border patrol. This system coordinates normative systems rather than integrating them. The most far going process of *integration*, however, has taken place in the economic sphere. A set of authoritative, legal, and bureaucratic institutions maintain a normative system of open economic borders, and represent shared economic interests aboard. The introduction of the Euro created a single monetary order for some EU-citizens. The political fiction of the people as beneficiaries therefore finds some institutional traction at the European level. Practical resonance, however, remains very limited because, on the one hand, supranational decisions result in distinct national experiences and, on the other hand, important enforcement and redistributive systems remain firmly organised at the national level. The current economic crisis has,

however, made the openness of these normative systems and interdependencies more salient to the greater public. Yet deep diversity remains a fact of life for most citizens, despite varying degrees of cooperation and even some integration at the European level. The political fiction of beneficiaries remains most plausible at the national level, where boundaries between particularistic national polities are maintained. The plausibility of this fiction is challenged at the pan-European level, where the heterogeneity of judicial-economic systems means EU decisions are implemented, and therefore experienced, in varying manners. In short, the fiction of beneficiaries remains mostly plausible at the national level, albeit it has some traction at the European level.

The people as *demos* relied upon citizens being able to partake in representative democracies. This normative system creates procedural relationships between citizens within the polity based on liberty and equality in will-formation processes. The three core institutions were a democratic constitution, the election of decision-makers, and a deliberative public sphere. These three institutions democratised states, transforming subjects into citizens. European integration has opened up these democratic systems, which means that national groups can pursue interests at both levels, thus offering a degree of power to 'exit' one system or another. Certain democratic relationships have additionally been created between European citizens, such as EU-citizenship and the right to elect some representatives in the European institutions. The political fiction of the *demos* therefore has a certain degree of practical resonance. European democratic bonds, however, continue to rely upon membership of national polities. Representative democracies continue to integrate citizens at the national level. Moreover, the lack of a public sphere means that deliberative processes remain institutionalised at the national level. The essential integrative process of democratic will-formation is almost completely absent at the pan-European level. As such, the political fiction of the people as *demos* remains most plausible at the national level. Individuals remain citizens of their nation-state, elect representatives in national elections, and participate in national deliberations on the public good first and foremost. These particular systems also reflect distinct understandings and consensuses of democratic legitimacy at the national level. In summary, the

opening up of national systems has given some degree of practical resonance to the *demos* at the European level. Nevertheless, this political fiction remains highly plausible at the national level due to the persistence of democratic representative systems at this level.

The lack of a European identity and infrastructure for its creation makes the political fiction of the people as nation implausible at the European level. Within nation-states on the other hand, the people as nation gained plausibility due to public socialisation into shared cultural frames. Citizens became part of a socio-cultural system, which in turn gave rise to a communitarian identity. These cultural relationships gave practical resonance to the claims of particularistic nations underlying European nation-states. The socio-cultural system at the European level, in so far as any emerges, lacks exactly this particularism at the core of its supposed communitarian identity. Europe's shared (democratic) values are too universalistic to ground such an identity. Public socialisation processes, moreover, remain institutionalised at the national level. European integration has done relatively little to challenge, reproduce, or open up this normative system, let alone replace it. Citizens remain embedded in socio-cultural relationships at the national level. The heterogeneity of judicial-economic and civic-democratic orders at the state level further bolsters claims to national particularity. Deep diversity within the EU, therefore, is not a widely shared belief that is ungrounded. The particularity of national systems within different states makes it an institutional fact on the ground. As a result, the people as nation is not plausible at the European level, whilst it continues to resonate at the national level.

The political fiction of sovereignty has become an implausible claim at both the national and European level. Historically, it became an institutional reality at the national level. State formation was a process in which the judicial fiction of sovereignty increasingly became an empirical reality. The centralisation of decision-making power and the accumulation of resources necessary for the implementation of its decisions gave plausibility to this political fiction. State agents could appeal to the three conceptions of popular sovereignty to legitimate this state formation process. A two-tier political order has nonetheless emerged in contemporary Europe. Integration has not only intensified cooperation between sovereign states but also integrated parts of

their decision-making power, which is euphemistically referred to as pooling, or delegation of powers. In contrast to, for instance, Lindseth's (2011) or Cheneval's claims (2008), I want to suggest that this (normative) delegation can no longer remain combined with claims to sovereignty in the statist sense. Some suggest that European integration has been the official death sentence of sovereignty (Bellamy and Castiglione 1997: 421). The modern concept of sovereignty was never as absolute in practice as in theory, and was hence a political fiction from its inception. Early modern theorists, such as Adam Smith, reflected on the political economic constraints on rulers' range of policy choices (Hont 2005: 185-266). The transformative aspect of European integration has not only meant that sovereign authority has become contested within the polity (see also Glencross 2012), but also that the institutional centralisation which gave it practical resonance is no longer an everyday reality of rule. What this means is that neither the European regime nor the national one can continue to plausibly claim full sovereignty. This contested claim warrants further attention.

The organisation of powers into a two-tier political order implies that neither can autonomously decide on all policy matters. The strongest claim to sovereignty arguably lies with national representatives, as the masters of the treaties. This claim is bolstered by the monopoly on the resources necessary for enforcement, national executives can decide upon the direction of the EU, and remain incorporated in decision-making procedures at the European level. Three interrelated processes of European integration nonetheless emerge to strongly contest their empirical claim to sovereignty. First is the judicial delegation of competences over entire policy domains to the supranational level, which has been accompanied by the integration of implementation powers. One example is the domain of competition policy enforced by Commission and CJEU. Second, the European tendency toward executive federalism (Crum 2013) challenges the claim that sovereignty remains with national representatives. This process has resulted in the transfer of powers to technocratic institutions, such as the ECB. More importantly, national executives institutionalised their transnational rule at the European level, a space in which they can take decisions through qualified majorities rather than through unanimity. Third, the supranational elite often

rely upon the dissonance which arises between national governments. The European centre can make decisions in relative autonomy by filling the space in the decision-making vacuum left by conflicting states. The masters of the treaties can, therefore, not always keep the guardians to account. In such situations, the latter at times share a higher degree of common purpose. The ECB, for instance, makes decisions with direct and undoubtedly political consequences concerning Greece's membership of the Eurozone. These processes challenge Moravcsik's liberal-intergovernmental claim (Moravcsik 1998; 2002; see also Schimmelfennig 2004). Even if states might ultimately chose to leave the Union, these processes challenge the political fiction of sovereignty in citizens' everyday experience of politics. The claims of nationalist populations that they have 'lost' their national sovereignty are not without institutional merit. However the opposite claim of a transfer of sovereignty to the European level remains implausible. The restructuring of power has meant that the political fiction of sovereignty no longer finds practical resonance. The willing suspension of disbelief becomes unlikely due to the concept's inability to act as a heuristic tool in making sense of Europe's contemporary political order.

This realist analysis has, I hope, convincingly demonstrated that the three fictions of the people remain anchored to the national level. The national particularity of this three-fold fiction of the people might challenge the legitimacy of European integration. New interpretations of these political fictions however are gaining some practical resonance. The people as beneficiaries and *demos* both find some resonance at the European level. Moving on to the political fiction of sovereignty, it is the most problematic to maintain at either level. The restructuring of power in Europe means that it holds little practical resonance. The historical congruence between a particularistic people and a political order's sovereignty is no longer in place, hence neither the three-fold conception, nor any of three distinct conceptions, can make sense due to the implausibility of the fiction of sovereignty. A holistic realist appraisal of these four political fictions therefore results in a condemnation of our commitment of popular sovereignty as a heuristic tool in contemporary Europe. The conclusion, however, is not set on justifying the previous *status quo* (e.g. Rossi and Sleat 2014). As argued in chapter one,

normative realists can demand the impossible. The contemporary commitment might require some new substantive fictions or an alignment of fact and fiction, as has happened in the past. The dismissal of political plausibility is therefore not sufficient to dismiss this conception at the normative level. If one can make the normative claim that this conceptual structure could make sense of the EU's legitimacy in relation to the key features of the contemporary European polity, then a vindication of our commitment is possible. The second part of the analysis therefore assesses whether commitment to the contemporary conception of popular sovereignty could make sense of legitimacy in Europe's political order.

The normative appraisal of a political conception relies on an analysis of its functionality in making sense of a political order's normative attractiveness, within a particular set of historical circumstances. In the case of contemporary Europe, the political order is no longer a centralised, relatively autonomous state with a hierarchical decision-making centre. The European and statist regimes are no longer separable, but integrated, or at least institutionally interconnected, into a two-tier political order. The conception of popular sovereignty should therefore accommodate legitimation stories able to make sense of these 'orders' together. Turning to the historical circumstances, the three key features of modern enlarged polities -- their complexity, value pluralism, and closure -- remain in place, but one also needs to take into account deep diversity within Europe. In the following normative analysis, I will appraise each contemporary conception of popular sovereignty and, to avoid objections of historical particularity, the more abstract normative conceptual structure of the contemporary conception of popular sovereignty. This normative analysis illustrates that, from the realist perspective, the plausibility of political fictions is not the primary challenge for our normative commitment. The main challenge is that the contemporary multi-faceted conception of popular sovereignty, which governs the legitimacy debate, cannot make sense of Europe's political order in this historical context.

In the previous chapter, the vindication of the technocratic conception of popular sovereignty emerged as a functional response to the complexity of the modern enlarged polity. On this conceptual structure, output legitimacy

could become an appropriate criterion to evaluate the EU's legitimacy. Technological advancements have contributed to an increasingly competitive and complex international political economy. The EU's highly specialised administrative bureaucracy is a *functional* response to the continued need to produce benefits for the citizenry in this complex environment (e.g. Lindseth 2011). This technocratic conception could make sense of the European interest in a global context -- "Smith abroad, Keynes at home" (Ferrera quoted in: Sangiovanni 2013: 224). The persistence of extensive national bureaucracies can thus be conceived as means to deal with the heterogeneity of the political orders. The contemporary European political order can consequently be understood as continuing to attain benefits for citizens in changing historical circumstances. This intertwinement, however, means that neither regime can monopolise this source of legitimacy. Further the EU lacks any meaningful powers to generate support through non-monetary economic instruments (Bartolini 2005: 199) which can compensate for the popular resentment caused by macro-economic integration. The impact of the 2008 global financial crisis on the Eurozone, including multiple bailouts, enforced austerity on multiple countries, and the enforced instalment of the technocratic Monti-government, further challenges this fair weather story. European citizenries had distinct *national* experiences, with some being significantly more severe than others. Europe's deep diversity then also shapes attempts to make sense of these "traumas". 'European' outputs transform into diverse economic outputs due to domestic (redistributive) economic systems. The heterogeneous domestic judicial-economic systems challenge the principle assumption of the beneficiaries' story, namely that EU-citizens share economic interests. In summary, the globalisation of the political economy can offer a functional explanation for the creation of a two-tier political order based upon the technocratic conception of popular sovereignty. Deep diversity, however, grounds some serious doubts at the normative level about this conception's ability to make sense of the output criterion for the Union.

The idea of meaningful interests has historically been challenged in democratic cultures. The democratic conception of popular sovereignty found its vindication as a functional response to circumstances of value pluralism. Democracy offers means for peaceful conflict resolution within this context,

thereby answering the first political question in relation to modern circumstances in a desirable manner. For the EU, a functional vindication might lie in the peaceful resolution of conflicts between historically antagonistic political communities. The European democratic order offers the infrastructure to funnel these conflicts, whilst national orders would funnel interests between the groups within the state's borders. The existence of two democratic regimes, however, might in itself result in the mutual undermining each one's democratic legitimacy (Cheneval and Schimmelfennig 2013; Lord and Pollak 2010). The contemporary conception explicitly connects one *demos* to one centre in order for it to express its sovereign will; the competitive conception (Glencross 2012) is, thus, no longer in line with contemporary conception of popular sovereignty. This conception of popular sovereignty cannot make sense of dual sovereigns competing to represent the common will (leaving aside the diversity of 28 national ones) in Europe's two-tier political order. Moreover, each polity has particularistic understandings of legitimate democratic will-formation. Deep diversity also characterizes national democratic arrangements. Yet it also constrains pan-European democracy. The European polity lacks common forums to accommodate mass deliberation, or at least opinion-formation. The European regime has to functionally deal with a community of strangers (Castiglione 2009), with a polity which lacks the tools to connect a European democracy to will-formation processes at the national level (Crum 2013: 615-619; Fossum 2005). The pluralism in Europe's polity is effectively of a markedly different species; value pluralism within the polities and deep diversity between them. In summary, the democratic conception of popular sovereignty could make sense as a functional response to peacefully govern relationships between antagonistic groups. The deep diversity of the European polity, however, sets constraints on the central process of the democratic conception of popular sovereignty: procedural will-formation. In other words, the democratic conception cannot remain vindicated at the normative level in these circumstances.

In the previous chapter, I argued that neither the technocratic nor the democratic conception could make sense of the closure of a polity. These conceptions assume closure. On the identiarian conception, socio-cultural

distinctiveness came to legitimate the high degree of closure of state polities. The state's legitimacy, in turn, relied on the congruence between the communitarian identity and the political order. The identitarian conception finds its functional vindication in the ability to make sense of the closure of the modern polity. The European polity, on the other hand, lacks a communitarian identity which makes sense of its closure, despite some theorists, like Jürgen Habermas, attempting to ground it in a non-consumerist culture (Cheneval 2010; Friese and Wagner 2002; Habermas and Derrida 2003). Leaving aside empirical plausibility, this identity does not make sense of social legitimacy in a polity marked by deep diversity. First, the defining feature of deep diversity is the existence of multiple communitarian identities in the polity. The question of closure is already answered in functional terms at the national level by the identitarian conception. Second, the European political community would compete with national political communities because this conception exclusively relates a nation's sovereignty to political independence. If the European identity were to overcome national ones, then the polity would be transformed once more, though this remains an elusive expectation. Alternatively, a European identity of some sort might emerge by virtue of the EU's institutional infrastructure; a rational 'embryonic' identity (Guibernau 2011). Such an identity would not offer a functional response to the need of closure in the polity however, because the principles are too universalistic to relate a national identity to a political regime. These principles might inform a story to legitimate why diverse polities are together, but they cannot justify why the closure of the EU should be contained to European countries. EU-institutions would, therefore, have to change to include others with similar commitments, or forfeit its legitimacy. Closure of the European polity remains a persistent challenge from this realist perspective. The nationalist conception of popular sovereignty can make sense of the closure at the national level, but it cannot offer an account of the closure, and hence legitimacy, of the second tier of the political order, and can therefore not remain vindicated in contemporary Europe.

This appraisal results in a condemnation of the three conceptions of popular sovereignty at the normative level. At this stage, I move to a higher level of abstraction to further clarify the significance of the two-tier order and

of deep diversity for this condemnation. Popular sovereignty, as a genre of legitimation story, possesses a particular conceptual structure. The latter posits that a constituent power bound together by a bond of collectivity is the authoritative source of a unitary constituted power, at least normatively. My genealogical enterprise illustrated that the constituted power became understood as the sovereign state. A possible vindication of this conceptual structure lies in its ability to offer a functional explanation for European integration. To remain sovereign in an increasingly competitive international political economy, the constituent powers had to 'aggregate' their sovereignty within a second decision-making centre. Bernard Williams explains that initial functional explanations can lose their force due to unforeseen consequences (Williams 2004: 20-40). An arguably unintended consequence has been the incremental dismantling of state sovereignty at the national level. As a result, so I will argue, the conception of popular sovereignty which informed change in Europe no longer remains normatively vindicated in the contemporary context. The emerging two-tier political order and the circumstance of deep diversity challenges the contemporary conceptual structure of popular sovereignty. On the one hand, deep diversity means that the European polity lacks a single popular sovereign to make sense of its two-tier political order. Furthermore, the more abstracted conceptual structure of popular sovereignty does not provide a functional justification to merge these polities into a single constituent power. On the other hand, the two-tier political order also challenges this conceptual structure. The stories of popular sovereignty have crystallised to make sense of a single authoritative decision-making centre: the unitary structure discussed at the start of the previous chapter. Europe's two-tier political order, however, consists of two decision-making centres. The structure cannot offer a functional explanation for the persistence of this fractured order. In summary, the conceptual structure does not act as a functional heuristic device in these circumstances, or at the normative level.

The conceptual structure of popular sovereignty cannot make sense of Europe's two-tier order's legitimacy, and might even contribute to its delegitimation. My realist claim becomes explicitly normative; statist conceptions of popular sovereignty *should* not govern our attempts to make sense of the EU's legitimacy. To clarify, my argument is not an empirical claim

that popular sovereignty has no practical resonance in the institutional structures of Europe. The persistence of states and the strength of national institutions which shape relationships between national citizenries gives it some degree of empirical relevance. The persistence of this political formation reinforces the belief that *homo nationalis* makes sense of the political world as a form of popular sovereignty (Balibar 2004b). The institutional reality of European politics, however, makes it into a poor heuristic device to make sense of the organisation of power. Further in relation to citizens' beliefs, the research is to some extent predicated on the opposite hypothesis; popular sovereignty does discipline processes of making sense of the EU's legitimacy. Moreover, this conception has shaped the European polity, as I argued in the previous chapter. From this perceptive however, the European regime imposes its foreign will upon national orders, resulting in high levels of resentment (e.g. Bartolini 2005; Siedentop 2000). This kind of resentment fuelled decolonisation movements; hence it is a political force to take seriously. Klaus Eder's proposal to place the nation on par with functional interest groups (Eder 2014) seems to also overlook this reality, because these groups also directly challenge peoples' self-determination. In the current climate of financial crisis, the rise of Euro-sceptic parties across the Union reflects the delegitimating force of this conceptual structure. More accurately, the conceptual structure of popular sovereignty becomes a source of resentment toward part of the European body politic. One might argue that this gives rise to a strange sort of self-hatred of the two-tier political order. From a realist perspective, therefore, this political conceptual structure no longer meets the 'realist constraint' of making sense of the legitimacy of a political order within its own historical circumstances. The contemporary conceptual structure of popular sovereignty can no longer guide political agents in meaningful ways in Europe's novel political landscape. The three associated criteria of legitimacy thus primarily become sources of contestation rather than legitimation. This realist analysis results in a condemnation of our commitment to the contemporary conception of popular sovereignty at the normative level.

VI - Conclusion

This chapter presented the institutionalization of the people and of sovereignty in Europe's contemporary political landscape. In the aftermath of the Second World War, European states engaged in processes of restructuring power and reconfiguring boundaries so as to retain their legitimacy. Most normative systems of peoplehood remain institutionalised at the national level in very particular ways, as was explored in the analysis of deep diversity within the European polity. The institutional analysis also showed that the boundaries between national systems have been opening up. Parts of the judicial-economic and civic-democratic normative system at the national level have, in parallel, been transferred and reproduced at the European level. These systems coincide with a significant restructuring of power within the European polity. National implementation systems have become increasingly interdependent and institutionally linked-up through a set of legally authoritative supranational and transnational institutions. The European system also includes a second authoritative decision-making centre, which added a second tier to Europe's political order. The re-establishment of a sovereign order at either the national or European level has become an elusive prospect, most importantly, because the more powerful intergovernmental decision-making powers are reliant upon supranational authority. In these circumstances, the political fictions of people continue to find practical resonance at the national level. Furthermore, the people as beneficiaries and *demos* find some limited resonance at the European level, while the political fiction of state sovereignty finds little resonance at either the national or European level. A holistic appraisal shows that popular sovereignty, therefore, cannot realistically act as a heuristic device to guide political agents' appraisals of legitimacy in contemporary Europe. Moreover, the conceptions and conceptual structure of popular sovereignty cannot make sense of the desirability of Europe's two-tier political order within the historical circumstances of deep diversity. Popular sovereignty, therefore, cannot remain vindicated at the normative level. This realist analysis results in a 'condemnation' of our commitment to the contemporary multi-faceted conception of popular sovereignty. This lack of vindication should result in a 'loss of confidence' in our current conception of popular sovereignty, which is

arguably reflected in the EU's democratic deficit and the wider crisis of democracy. This confidence, however, can be restored if our statist conception would transform to adapt to current historical circumstances in Europe. In the last chapter, I suggest that a commitment to popular sovereignty in this novel institutional landscape requires a *demoicratic* reconceptualization of its conceptual structure.

Endnotes

[1] Saskia Sassen similarly observes that globalisation processes build up from assemblages of national particularities (Sassen 2006).

[2] For an overview of major historical work on European integration, see (Milward 2007).

[3] Arguably in line with a broader historical and sociological pattern of emergence of executive powers (Crum 2013; White 2015).

[4] See the general provisions, http://www.europarl.europa.eu/charter/pdf/text_en.pdf (last accessed 29 August 2014).

[5] Some nationalists, like Noel Malcolm, argue that sovereignty can transfer from the national to the European level only once nationhood has emerged at the European level (Malcolm 1991).

Chapter 8: *Demoicratic* Popular Sovereignty in Europe

> [S]tate-bound demoi can no longer do their thing separately, nor organize their co-operation by borrowing from traditional notions of domestic law and democracy, that is, democracy of the kind we are familiar with and whose vocabulary has become second nature to most Europeans – predicated on the constructed existence of a 'people'.
>
> Kalypso Nicolaïdis, 'European Demoicracy and its Crisis', 366

> By considering alternative futures, we begin to see that the future is shaped not only by the past but by what we think is possible and by the choices we make.
>
> The Shell International Petroleum Company[1]

I - Introduction

The previous chapter concluded that a normative commitment to the contemporary conception of popular sovereignty could no longer remain vindicated in Europe's contemporary historical circumstances. This appraisal rested upon a three-fold institutional analysis of Europe's novel political landscape. The first part of the analysis focussed upon the outcome of the highly coinciding normative systems within the state's territory. I argued that these reinforcing boundaries have resulted in deep diversity. National arrangements depend on the output, democratic, and identitarian criteria to make sense of European states' legitimacy. Heterogeneous institutional arrangements of the judicial-economic, civic-democratic, and socio-cultural normative systems within the state territories reflect distinct consensuses on the state's legitimacy, shaped by each state's particular historical circumstances and understandings thereof. After this national-level analysis, I examined the reconfiguration of the normative systems of peoplehood in contemporary Europe, with a focus on the European level. The analysis showed that national economic and democratic arrangements had opened up due to the creation of judicial-economic and civic-democratic systems at the

pan-European level. Thirdly, I analysed the restructuring of political power that has taken place. The European polity has a two-tier political order characterised by autonomous decision-making power at both the national and European level, with implementation power being integrated through a system of multi-level governance. The current balance of power has made the transformation of this institutional landscape an unlikely prospect in the foreseeable future. In the realist appraisal, I argued that the contemporary conception of popular sovereignty cannot act as a heuristic tool due to the loss of practical resonance of its core political fictions, nor make sense of the legitimacy of the political order within current historical circumstances. This inability might well contribute to the persistent debate on the EU's democratic deficit, and is a negative conclusion which further raises a set of normative questions. In this final chapter, I will argue that another conception of popular sovereignty could potentially make sense of the EU's legitimacy through a realist lens.

This chapter proposes a *demoicratic* reconceptualisation of popular sovereignty. This reconceptualisation of popular sovereignty can make sense of the legitimacy of Europe's two-tier political order within the European context of deep diversity. This chapter constitutes the normative payoff of the genealogical enterprise into the conception of popular sovereignty which governs the EU legitimacy debate. This extensive genealogical enterprise was necessary due to the historical constitution of the contemporary conception of popular sovereignty, and because the appraisal relies upon the concept's functionality within its own historical circumstances. This genealogy contributed to a more sophisticated understanding of the multiple facets of the contemporary conception of popular sovereignty, and its functional reliance upon a particular institutional context. Furthermore, commitment to this conception in a statist polity was vindicated from a realist perspective. The transformation of the European polity, however, challenges not only its heuristic functionality, but also its normative ability to make sense of the existing political order from within its socio-political context. Taking this conclusion as its point of departure, this chapter departs from the Williams' inspired assessment of a conceptual commitment to a realist method of conceptual formation. The theoretical approach nevertheless remains

embedded in Williams' wider political philosophy, in which political commitments should make sense of particular political orders. Using Andrea Sangiovanni's practice-dependent method of concept formation, I intend to propose an interpretation of the *institutional* European bonds of collectivity. I argue that the judicial-economic systems resulted in a commercial bond of collectivity, and the civic-democratic ones in a *demoicratic* one at the European level. This interpretation grounds the case for a *demoicratic* reconceptualisation of popular sovereignty, because the conceptual structure of popular sovereignty connects multiple constituent powers to non-sovereign constituted power. The significant insight here is that it breaks the conceptual relationships between (state) sovereignty and popular sovereignty. In addition to this normative attractiveness, I continue by suggesting that this conception could act as heuristic tool to make sense of *EU* legitimacy as part of Europe's novel contemporary political landscape. The chapter, thus, ultimately returns to the real world problem triggering this genealogical enterprise: the EU's democratic deficit.

The argument unfolds as follows: the chapter starts (section II) by placing this chapter within the wider literature on *demoicracy* in the European Union. This increasingly salient literature aims to make sense of the persistence of peoples -- deep diversity -- and the EU as a novel regime through which to manage dependencies between them. I will align their position with the core findings from the previous chapter; deep diversity and a two-tier political order. This section also distinguishes my point of departure from some of the more idealist *demoicrats*. In the subsequent section (section III), I suggest that a two-tier interpretation of the institutional bonds of collectivity within the European polity is appropriate for the Union using Sangiovanni's institutionalist realist method (Sangiovanni 2008). Individual citizens remain institutionally bound up in national peoples, the latter, however, have gained transnational bonds as a result of European integration. These bonds make sense of the interconnectedness of the European political landscape, this two-tier conception of the people can therefore act as a realistic heuristic tool resulting in the willing suspension of disbelief of this political fiction. This interpretation of the bonds of collectivity informs my subsequent proposal (section IV) for a *demoicratic*

reconceptualisation of popular sovereignty. I emphasise that multiple constituent powers do not just create nationally political orders, but also a multinational order to govern their transnational bonds. This *demoicratic* conceptual structure can govern stories which make sense of the EU's (and the member states') legitimacy. Finally (section V), I return to the real world problem of the EU's democratic deficit by sketching the consequences for the EU's democratic institutions in relation to these commercial and *demoicratic* bonds. To anticipate my argument, a *demoicratic* conception of popular sovereignty can largely legitimate the EU democratically. The conception, however, suggests a greater role for national parliaments, and scepticism toward the institutional consequences of the monetary union. A *demoicratic* conception of popular sovereignty could guide the behaviour of political agents in making sense of the Union's deep diversity and interdependencies without losing critical potential. I conclude (section V) on the hopeful note that a legitimate *demoicratic* European polity is a realistic prospect for the foreseeable future.

II - The EU as (legitimate) *demoicracy*

The conclusion of my normative realist assessment is that the commitment to a multi-faceted conception of popular sovereignty can no longer remain vindicated. This contemporary conception can neither act as a functional heuristic nor as a realistic normative commitment to make sense of the EU's (or states') legitimacy within Europe's transformed political landscape. The normative payoff of this thesis lies in this chapter's proposal for a *demoicratic* conception of popular sovereignty. *Demoicracy* is increasingly salient concept in EU studies literature. The affinity with this position warrants a more in-depth treatment than in the first chapter because my institutional analysis resonates with this literature. From the institutional analysis, I conclude that the combination of deep diversity and a two-tier political order contribute significantly to the condemnation of popular sovereignty. The coinciding of these national orders within the 'hard shell' of the territorially sovereign state resulted in a progressive separation between European statist polities. The latter entered the process of integration with differing agreements on how each of the three criteria of legitimacy intertwine in the legitimation of their

state, shaping and being shaped by their specific social and political institutions. This deep diversity also results in distinct perspectives on the legitimacy of the EU (e.g. Lacroix and Nicolaïdis 2010b; Nicolaïdis and Young 2014: 1409-1411). The particularity of Europe's domestic politico-statist, judicial-economic, civic-democratic, and socio-cultural institutions continue to shape individuals' relationships to one another in the Europe's contemporary polity. The theoretical upshot is that deep diversity sets a realist constraint on a political theory of EU legitimacy. Broadly, *demoicrats* share this analysis of deep diversity at the national level, and reject the existence and desirability of a European people. Richard Bellamy, in particular, explicitly rejects the existence of any supranational equivalent to these national peoples (Bellamy 2013). In line with this *demoicratic* analysis, therefore, a conception of popular sovereignty which is aiming to make sense of EU legitimacy can rely upon the political fiction of the people but only at the national level.

The justification of European integration has developed since early integration. The initial justifications for integration were the benefits of preventing war and attaining prosperity. These outputs were initially Pareto-optimal zero-sum games (Lord 2011). Both the permissive consensus and overwhelming European elite preference for integration can make sense in these circumstances. The emphases in legitimation stories of European integration have changed in contemporary political landscape. Two strands have been particularly salient, and which focus on specific issues at the European level: (i) the interdependence in attaining global economic competitiveness and tackling other problems, and (ii) the interdependence in governing these issues, and other interdependences, democratically. The first type of argument justifies executive federalism (Crum 2013). Technocratic institutions accountable to intergovernmental ones can arguably pursue set aims without need for direct democratic legitimation (Scharpf 1999). The second type of argument justifies Europe's multilateral, transnational and supranational decision-making authorities as long as the regime incorporates direct democratic legitimation mechanisms in its institutional infrastructure. The Union should offer democratic tools to manage interdependencies between Europe's democracies (Nicolaïdis 2013: 351). Leaving aside the (initial) empirical validity of these justifications for integration, the EU

contributes to the creation of institutional interdependencies. The progressive pooling of sovereignty at the European level, and democratisation of established decision-making institutions -- whether to attain legitimacy (e.g. Føllesdal and Hix 2006) or fulfil a federal (messianic) *telos* (Weiler 2012) -- resulted in the structuration of a second tier in Europe's political order. The impact on the relationships between citizens has primarily been the opening up of borders between statist polities weakening their economic and democratic-political boundaries. From this perspective, national autonomy let alone sovereignty has become an outdated concept to capture this reality (see however Cheneval 2008; Lindseth 2011). The existing political order challenges such Kantian statist conceptual frameworks of republican autonomy.[2] The main point, by contrast, is that European integration resulted in the institutionalisation of interdependencies between national orders through a European political order, which, in turn, created particular relationships between citizens in the European polity (more on their nature to come later on).

Demoicratic scholars propose models to do justice to this reality of national orders and European interdependence. Many argue that the current state of affairs is more normatively desirable than a statist order at the national or European level. The *demoicratic* literature attempts, therefore, to make sense of the EU's legitimacy as (part of) a novel non-state political regime able to govern this *demoicratic* polity (Nicolaïdis 2013: 354). The literature is more diverse on the issue of appropriate legitimate institutional design for the Union. Idealist contributions take a principle-first approach to the question of the EU's legitimacy (e.g. Bohman 2004; Cheneval and Schimmelfennig 2013; Scherz 2013). These approaches start with an ideal of democracy to then apply it to the EU. Unlike Morgan's federal statism, these accounts aim to make sense of a *demoicratic* polity. They tend to propose an institutional form based upon a single principle that should justify the Union in the eyes of reasonable citizens. James Bohman, for instance, uses a deliberative principle to theorise legitimate governance in the Union (Bohman 2004). However, the most prominent ideal theorist of the EU as legitimate *demoicracy* has been Francis Cheneval (Cheneval 2008; 2011; Cheneval and Schimmelfennig 2013). Cheneval takes a Rawlsian political constructivist

approach (Cheneval and Schimmelfennig 2013: 335) akin to Glyn Morgan (Morgan 2005a). In his article together with Frank Schimmelfennig, Cheneval's ideal benchmark is applied specifically to the EU (Cheneval and Schimmelfennig 2013: 340; fn 4).[3] They argue that a Union is a realm of justice between the international and the domestic (Cheneval and Schimmelfennig 2013: 334). After offering some free standing, broadly accepted empirical claims on the EU, they claim that the democratic deficit is a product of the unrecognised normative nature of the EU as an in-between polity. The EU should be made sense of as a *demoicracy*. To quote the authors at length on their definition,

> Demoicracy is a specific political order that takes into account the two fundamental normative references of liberal democracy: citizens and statespeoples. It does not compromise on core fundamental rights of individuals, but it balances the political rights of individuals and statespeoples. Democratic statespeoples ought to recognize each other's institutions of freedom – most of all each other's popular sovereignty. However, as decent statespeoples, they should also take into consideration the negative externalities their democratic decisions have on each other and on the fundamental rights of citizens of other statespeoples. Hence, they ought to co-ordinate their decisions and decision-making bodies accordingly. Furthermore, liberal democracies ought to respect the individual rights of citizens (Cheneval and Schimmelfennig 2013: 340).

In an earlier article, Cheneval argues that "Territories and formal sovereignty of states are thus valued to the extent that they enable the orderly and legitimate existence of liberal democratic peoples" (Cheneval 2008: 45). This definition relies on an 'ideal' democratic conception of popular sovereignty, as he also recognises (Cheneval and Schimmelfennig 2013: 341). The normative principles for an ideal *demoicracy* are, as a result, distilled from behind a veil of ignorance (Cheneval and Schimmelfennig 2013: 341). After formulating principles on fundamental rights and matters of representation, Cheneval and Schimmelfennig hold the current EU-institutions to this standard to conclude that the Union actually meets their standards, but that state institutions are the source of delegitimation (Cheneval and Schimmelfennig 2013: 346-347). The

conclusion is indeed thought provoking. This Rawlsian ideal approach to theorising the Union's legitimacy is legitimate in its own right.

The source of divergence from my approach is probably most fruitfully found in the conceptualisation of the people. Firstly, Cheneval effectively co-identifies a liberal democratic people with a set of state institutions. This 'liberal democratic' definition, I assume, results in the somewhat unsatisfactory term 'statespeoples'. Unsatisfactory in so far that it becomes hard to analytically distinguish between the bonds of collectivity and the organisation of power. This definition also seems unsatisfactory as an ideal argument. Behind Cheneval's veil of ignorance, both peoples and individuals emerge as normatively relevant, but logically speaking the statespeoples are those same individuals. Put differently, Cheneval (implicitly) argues that those 'statespeoples' are the states; he thus attributes moral agency to a set of institutions. This conceptualisation seems unsatisfactory because it results in a normative upgrading of the state from constituted into constituent power. This interpretation is bolstered by his application of this ideal to the EU, a move in which the logical step from statespeoples to state-representatives remains unproblematised (Cheneval and Schimmelfennig 2013). The move, however, would be problematic if Cheneval believed that citizens are the statespeoples. In his argument, popular sovereignty is effectively equated with state sovereignty. In my proposal for *demoicratic* popular sovereignty, I argue against the inclusion of this conceptual relationship between state sovereignty and popular sovereignty as part of the conceptual structure which makes sense of the EU's legitimacy at the normative level.

The second point of departure between our two accounts is his specific conceptualisation of the people. This point is intertwined but analytically distinct from the previous reflection on states. Cheneval's conception of a people does not actually do justice to our normative commitment to popular sovereignty. Cheneval argues that his ideal of *demoicracy* connects with decision-making and deliberation "in concrete life worlds and political communities" (Cheneval and Schimmelfennig 2013: 341). Yet the theory offers no substantive appreciation of these concrete life world and political communities, it holds no real relationship to the experience of being a people. The genealogical reconstruction showed that the contemporary conception of

the people is multi-faceted. Political agents can use these conceptions to make sense of their political place in the world. The issue is not that Rawls' liberal democratic story is unconvincing to many at first glance. Realists have argued that many citizens have bought into the Rawlsian ideology (e.g. Geuss 2008: 60-89). But if this realist analysis is correct then this ideology masks at least two other conceptions which also continue to impact European citizens' attempts to make sense of legitimacy. In its classic role, my genealogy subverts Rawlsian democratic popular sovereignty by exposing other relevant conceptual dimensions in legitimating modern democracies. Turning to Cheneval, the issue is that his definition overlooks relevant aspects of the contemporary conception of the people. My conceptualisation of the people takes seriously the historical constitution of our conception, the influence of political institutional contexts in shaping them, but also their reliance upon them for their functioning. For these reasons, my realist conception of the people is multi-faceted rather than solely focussed on democratic conception, even in attempts to make sense of democratic legitimacy. I thus depart company from Cheneval's idealist conception of the people. To clarify, these differences set my realist method apart from his idealist one. The latter has merit, but it is markedly different from my realist approach to political theory.

My argument broadly aligns more with the prominent non-ideal contributions to the *demoicratic* literature, such as Bellamy, Castiglione, Neyer, and Nicolaïdis. I share these theorists' more practice-orientated mode of the theorisation of EU legitimacy. Especially, this final chapter takes an institutionalist practice-dependent approach aligning with these non-ideal theorists. I shall therefore present their positions to then outline my contribution to this part of the present body of work. First of all, Bellamy and Castiglione propose an open form of constitutional republicanism (Friese and Wagner 2002: 354-355), which they have recently linked to the idea of a European *demoicracy* (e.g. Bellamy 2013; Bellamy and Castiglione 2013; Bellamy and Weale 2015). In line with my contribution, Bellamy and Castiglione theorise the people first and then derive appropriate principles and political forms which could legitimate the Union. Their argument emphasises the persistence of particularistic communities, each with their own understanding of the common good, within the European polity (Bellamy and

Castiglione 2013). Their conclusion is that the European polity is a 'community of strangers' (Castiglione 2009) akin to my analysis of deep diversity. Their normative solutions to the democratic deficit include proposals for a republican ethos of non-domination between state representatives, and *demoicratic* representation by national parliaments at the European level (e.g. Bellamy 2013; Bellamy and Castiglione 2013; Bellamy and Weale 2015).

In his recent contributions, Jürgen Neyer focuses more on the legitimate form of the EU's institutional design (e.g. Neyer 2012; Neyer 2014). He does not explicitly identify as a *demoicrat*, however focuses on the structures of justification appropriate for Europe's multi-level governance regime (Neyer 2014). Neyer draws upon Auel's account of the principle-agent relationship (Auel 2007) to theorise the constituent-constituted power relationship. This route results in a top-down justificatory model in which after delegating power the ruled demand justifications from the rulers. Drawing upon Rainer Forst 'justice as a right to justification' (Neyer 2012), Neyer argues that citizens' expressed unwillingness to a merge into a European *demos* makes national parliaments the prime source of justified justifications for European integration. These institutions should therefore provide a justification to the ruled. He further proposes that they should gain greater influence within the constitutional process of the Union (Neyer 2014). In this justification, Neyer's *demoicratic* analysis of the nature of the European polity comes to the fore; it is a polity with multiple constituent powers. This argument follows a cultural conventionalist route (Sangiovanni 2008: 144-146) because his argument's normative impetus is drawn from citizens' beliefs. Their unwillingness to unify informs the appropriate conception of the people as national peoples. Like Bellamy and Castiglione, he emphasises the importance of national peoples and parliaments in making sense of the EU's legitimacy.

Finally, in a recent article which synthesises much of her extensive writings on the topic (e.g. Lacroix and Nicolaïdis 2010b; Nicolaïdis 2003; Nicolaïdis and Howe 2002), Kalypso Nicolaïdis defends *demoicracy* as the appropriate form of European governance. Her defence of this non-statist form ultimately rests on the analysis that "the name of the democratic game in Europe today is *democratic interdependence"* (Nicolaïdis 2013: 351; italics in

original). After outlining this third way, Nicolaïdis argues in favour of a normative-inductive approach to theorising the EU as a legitimate *demoicracy.* Drawing inspiration from non-ideal philosophers, she argues that immanent normative principles can be extracted from European governance practices, such as the open method of coordination. Historical and social interpretations can contribute to determining norms, which can then act as a source for the immanent critique of recent developments or articulated aspirations (Nicolaïdis 2013: 357-358). The idea of *demoicracy* should act as a selection criterion for appropriate norms within these practices. Her conclusion is that transnational non-domination and mutual transnational recognition of diversity form the immanent norms appropriate for the Union. These norms suggest ten tentative principles to guide the governance and design of the Union. Albeit distinct, my realist method aligns closely with Nicolaïdis in this final chapter, because I develop ('induce') the appropriate conception of popular sovereignty ('norms') from existing institutional relationships.

My contribution to this theoretical body of work lies, firstly, in an interpretation of the European bonds of collectivity which underscores Europe's *demoicratic* polity and, secondly, in the proposal that a *demoicratic* conception of popular sovereignty should act as the conceptual structure with which to govern attempts to make sense of the EU's legitimacy. My argument shares the central conclusion of these *demoicratic* theorists' work; the EU should be understood as a legitimate *demoicracy.* The interpretation of the bonds of collectivity proposes a further argument to understand the European polity as a *demoicratic* one through a sophisticated interpretation of the institutional European bonds of collectivity in addition to national ones. The two-tier political order has to balance deep diversity and institutionalised interdependencies. Non-ideal theorists offer convincing cases for employing particular norms of legitimacy to govern relationship between rulers and ruled in a *demoicratic* polity. Republican non-domination, mutual recognition and a right to justification *ethoi* could govern the institutional relationships within the EU legitimately. Yet I will not focus on particular legitimation stories, but rather on their conceptual structure. My *demoicratic* conception of popular sovereignty diverges from other contributors to some extent, however the specific differences arise at the normative-conceptual level rather than at the

practical-institutional one. On the latter, my institutional sketch will align to a large extent with the aforementioned non-ideal contributors. However, my underlying realist argument at the conceptual level adds a new justification to this literature. My argument starts with an *interpretation* of EU-citizens' bonds of collectivity, based upon the previous chapter institutional analysis. Rather than repeat the details, I focus on a plausible interpretation of current institutionalised bonds of collectivity. This interpretation should bolster the *demoicratic* case from a different perspective, and will also serve to ground the reconceptualisation of popular sovereignty in the subsequent section.

III - Europe's institutional bonds of collectivity

My philosophical method of concept formation is based on Sangiovanni's practice-dependent approach (Sangiovanni 2008). Drawing inspiration from Bernard Williams, among other realists (Sangiovanni 2008: 159; fn 49), he develops an interpretive method in which the move from a concept to a specific (normative) conception should take place with reference to the concept's role in a particular political context (Sangiovanni 2008: 164). Human rights, for instance, might be a 'thin universal' -- a concept -- but it only becomes meaningful within a specific institutional context -- a conception. Sangiovanni distinguishes his institutionalist approach from cultural conventionalists. The latter argue that peoples' beliefs should prescribes a politically relevant conception. Certain communitarians argue that philosophers should determine the relevant conception of the people by inquiring into individuals' specific beliefs (e.g. Walzer 1977). Institutionalists, by contrast, argue that an appropriate concept is one able to govern a specific set of institutions (Sangiovanni 2008: 144-148). This method consists of three stages (Sangiovanni 2008: 146-150). Stage one is a pre-interpretive phase in which the general contours of a concept are outlined, such as justice or legitimacy. These contours consist of broad family resemblances upon which most theorists should agree. Stage two is a delineation of the point and purpose of the specific institutions to which this conception should apply. A Hobbessian state's point and purpose, for instance, is civil order. A conception of justice in a Hobbessian state (if at all possible) should

consequently result in order. Sangiovanni argues that a political order grounds other orders, which creates relationships between individuals partaking in these orders (Sangiovanni 2008: 147). The impact of these institutions on the relationships between regime's subjects should therefore affect the conception. The third post-interpretive phase is one in which a critical reflection can take place on a particular conception's appropriateness for political institutions. Global justice, for example, cannot consist of redistribution because the necessary coercive structures are absent at the international level. In his paper on solidarity in the EU, however, he uses this approach to develop a particular conception of solidarity. This institutional analysis ultimately grounds his three-fold conception of the duties of solidarity in the EU (Sangiovanni 2013). What this illustrates is that instead of criticism, the third stage can also consist in the formation of an appropriate conception for a particular context. In this chapter, I shall first offer an interpretation of the bonds of collectivity within the Union, and then suggest how a *demoicratic* conception of popular sovereignty follows from this interpretation.

Chapter two can be considered as having carried out the pre-interpretive phase. To briefly recap however, citizens become a people in virtue the bonds of collectivity. In practice, a shared identity grounds a self-conception of the people. From a theoretical perspective, thinkers posit a similarity between a multitude of individuals, such as interests or values. From an institutional perspective, participation in a normative system, such as a democratic order, creates relationships between them. In this analysis, I focus exclusively on these *institutional* relationships. These institutional bonds of collectivity can ground a realistic theoretical account of the political fiction of the people and, ultimately maybe, a self-conception. The analysis focuses on the question of how European integration has changed citizens' *institutional* bonds of collectivity. In contrast to Sangiovanni (2013) and arguably Nicolaïdis (2013) as well, I shall not reflect or assume the point and purpose of the Union as *demoicracy* or otherwise. Instead, 'the point and purpose' guiding this analysis of the people are the historical normative systems that legitimated the modern democracies in virtue of output, democracy, and an identity. In a more presentist move, I suggest a coherent interpretation of the existing *institutional* bonds of collectivity because, as argued in the previous

chapter, these institutions are likely to persist. For the interpretation of the institutional bonds, I draw upon the evidence of the previous chapter. Rather than merely repeat the exact findings, I focus on providing reasoned elaborations which can inform a coherent interpretation which makes these bonds intelligible.

In this section, I offer a two-tier interpretation of the institutional bonds of collectivity in the European polity: (i) the reinforcement of bonds of collectivity persists at the national level, and (ii) European integration has resulted in two *partial, mediated* bonds of collectivity which are associated with its economic and democratic order. The first tier describes how individuals remain deeply embedded in economic, democratic, and socio-cultural relationships within their national orders. Deep diversity remains a constitutive fact of the European polity. In its political landscape, the nation-form continues to institutionalise judicial-economic, civic-democratic, and socio-cultural bonds of collectivity between individuals. The multi-faceted conception of the people can therefore continue to make sense as a political fiction at the national level. This practical resonance can continue to inform the willing suspension of disbelief. That being said, economic and democratic normative systems have emerged at the European level. In the second tier, these systems have given rise to novel bonds of collectivity absent in other parts of the world. I characterise these bonds as novel because of two particular characteristics. Firstly, European systems only partially reconstruct their national counterparts. Secondly, the radically diverse national systems continue to inflect these institutional bonds. These bonds are, as a result, more coherently and accurately interpreted as binding together national peoples as wholes rather than as individual citizens. In addition to the persistence of national bonds are ‘European’ bonds of collectivity. The diverse national networks of relationships and the partial and mediated European relations should be taken seriously in a realist interpretation of the bonds of collectivity, and will lead me to argue in favour of their conception in two tiers.

Firstly, I propose that these institutional bonds of collectivity bind together individual citizens at the national level. This first claim connects two institutional analyses: the persistence of national welfare regimes, national processes of democratic will-formation, and of national identities; and the

particularity of these institutional arrangements in giving rise to deep diversity within the European polity. These two analyses inform the interpretation of heterogeneous institutional bonds of collectivity within the European polity at the national level. The normative judicial-economic, civic-democratic, and socio-cultural orders are analytically distinct, but institutionally reinforced and intertwined with one another. The institutional bonds of collectivity give rise to an interpretation of individuals as integrated into a national people. This historical process has given rise to distinct interest-based, democratic, and identitarian bonds of collectivity within national contexts. The rise of micronationalisms in the United Kingdom, Spain, and Belgium do not necessarily challenge this analysis, because the legitimacy of the institutional relationships has become contested based on the same criteria. Yet these institutional orders have not broken down.[4] One further important justification for this interpretation is the persistence of the territorially organised state. European integration has meant a weakening of its 'hard shell' through its embeddedness within a two-tier political order. Nevertheless, as Nicolaïdis and Young observe, it remains an important nexus for a consensus on legitimacy (Nicolaïdis and Young 2014). This function as nexus is a historical product of these national-level institutional bonds of collectivity. These institutional relationships between individual citizens remain organised within the territorial borders of the state. National bonds of collectivity, so I propose, consequently bind individuals together in particularistic relationships at the national level. On my interpretation, therefore, contemporary Europe consists of peoples at the national level.

That being said, European integration has resulted in new institutional relationships. Europe's judicial-economic order, as outlined in the previous chapter, pursues the commercial interests of the Union as a whole. Since the Single European Act (SEA), the pursuit of the 'rationalisation' of Europe's economic order was meant to increase overall competitiveness in the international environment. With the exception of agriculture, liberalisation efforts have created a single market within the Union. The transnational common market increasingly transformed into a single European market. The economic integration process has primarily been one of boundary destruction through administrative coordination. The relationships between EU-citizens

have also changed as a result of these efforts. The single market creates interdependencies with regards to economic performance between European economies. Furthermore, the European Commission has started to represent the Union abroad in an increasing number of international forums, such as the WTO. Clearly, EU-citizens would benefit (or suffer) from the deals made by these European representatives. In addition to external representation, the EU-regime enforces contracts between states (the treaties) at the domestic level, such as in the realm of competition law. Matters of enforcement have not remained limited to commercial contracts. The opening up of economic borders, associated with the four freedoms - freedom of movement of goods, capital, services, and people - has given rise to cross border crime. A transnational EU-regime now coordinates a network of infranational bureaucracies concerning matter of criminal justice. These latter institutions aim to secure the rule of law within this new institutional reality. The European process of economic integration reflects a capitalist logic according to which the rule of law is a precondition for economic prosperity. From this perspective, transnational coordination reflects a shared interest in the enforcement of a system of rights at the national and European level. From the process of economic integration, a judicial-economic normative system has emerged at the European level that creates an institutional bond of collectivity between European citizens as beneficiaries.

These institutional interest-based bonds, however, are only partial and remain nationally inflected. From a contemporary perspective, the bond of collectivity is only a partial reconstruction of the national counterpart. The pressures of democratic and nationalist movements cumulated in an ‘area of equality’ within state. In these historical circumstances, the judicial-economic systems in Europe’s states transformed so as to pursue a greater number of economic redistributive and social services. The European regime is primarily concerned with trade and macro-economic policy, and it moreover only has a limited number of macro-economic instruments at its disposal. Europe’s staunch Anglo-Saxon outlier (Esping-Andersen 1990; Hall and Soskice 2001) -- the United Kingdom -- performs a greater number of far reaching welfare services than the European governance regime. Moreover, unlike the United State and other regimes, the ‘federal’ level’s decision-making capacities are

limited by national entities. The European commissioners bargaining space, for instance, is constrained by the decisions of national ministers. In short, the scope of legal-economic aims and instruments inform this characterisation of European bonds as only partial compared to its statist counterparts. The interrelated qualification of national inflection draws upon the same observations, but stresses the heterogeneous consequences of Europe's judicial-economic order. The consequences of this regime are essential because a political order should derive *output* legitimacy for its people from the government of its legal-economic normative systems. The economic crisis effectively showed the lack of homogeneous outcomes in matters of political-economy. The output associated with the Union is not only negative -- generally a concern for output legitimacy -- but differentiated among the various European peoples. The positive as well as negative effects of economic cooperation and integration are channelled through national level welfare arrangements. Enforcement agencies also remain national, following at times supranational or transnational directives. Europe's institutional bonds of collectivity, associated with the people as beneficiaries of a legally governed capitalist economy, therefore remain nationally inflected. I consequently propose that these European bonds of collectivity are both partial reconstructions, compared to their national counterparts, and remain nationally inflected.

I propose to call this first 'European' bond of collectivity the commercial bond. The term 'commercial' is coined with Hume's observation in *On Commerce* in mind, that individual citizens' luxury and the state's security and *grandezza* align in the pursuit of commercial interests abroad (Hume 1987 [1752]: 31). Broadly, this pursuit of commerce became identified in the cutthroat competition for markets abroad and liberalisation of the domestic economy. These Lockean regimes ensured civil liberties, such as property rights, but not necessarily political ones. Property rights had an instrumental justification in creating regularity to stimulate industry, rather than possessing an intrinsic (democratic) value (Bellamy 2004: 6). This early modern regime secured liberal rights and liberties in order to attain internal peace and prosperity. Competent statecraft was identified as a necessary precondition of legitimate rule rather than inclusiveness. I want to suggest that the European

judicial-economic order resembles this early modern Lockean-Humean state. The purpose of the European regime is the pursuit of the commercial interests of the Union aboard. Since the SEA, the European judicial order officially enforces economic property rights to increase international competitiveness through internal market integration. Market integration has resulted in closer cooperation on issues of internal order and border control. The historical order is essential for my interpretation because I do not propose that the coordination on criminal enforcement and commercial interests were interrelated aims of the EU. My argument is that the capitalist logic of market integration to pursue of commercial interests forced European states to coordinate on matters concerning property. The successful integration of the common market forced national administrations to coordinate in order to maintain national judicial orders, which, in turn, are the foundation of their compulsory redistributive economic regimes. Therefore, in a capitalist European polity, commercial-economic aims continue to relate to rely on judicially enforced transnational system of property rights. The judicial-economic normative systems remain largely in place at the national level, but institutional connections have additionally been made in the pursuit of commercial interests. At the European level, the most plausible interpretation, so I suggest, is a commercial bond of collectivity between national peoples rather than individuals, in addition to the national compulsory bond of welfare redistribution between individuals.

European integration, however, has not merely resulted in the institutionalisation of a legal-economic normative system. A civic-democratic system has also been erected at the European level. Integration resulted in the autonomous exercise of power at the European level. The new political regime offers the means to avoid war within a historically antagonistic polity. It thus ensures a civil order of states akin to the Hobbessian state's 'point and purpose', albeit through a rather Kelsenian democratic logic of compromise. This order, however, was perceived to lack a necessary degree of democratic legitimisation; the democratic deficit. The process of democratisation resulted in a European civic-democratic system. The three key democratic institutions are a *democratic* constitution, the election of representatives in decision-making procedures, and a public sphere. Focusing on the constitution and the

parliament for now, EU-citizenship exists in virtue of the constitutional treaty. The European Parliament (EP) consists of national representatives who are directly elected by EU-citizens. Furthermore, in line with federal regimes, intergovernmental representatives in the Councils represent the interests of the constituent parts of the European *Union*. Unsurprisingly, some argue that the European *demos* exists, at least on a nascent institutional basis (e.g. Føllesdal and Hix 2006; Habermas 2001). The opening up of borders between European peoples has been accompanied (and enforced) by the creation of a civic-democratic normative system at the European level. This procedural order creates institutional democratic bonds of collectivity at the pan-European level.

This second 'European' bond of collectivity is, however, also distinct from the national democratic bond. Both citizenship and electoral representation have been institutionalised in a particular, transnational manner. Citizenship is a transnational institution, because citizens are not EU-citizens in virtue of being a subject of European power. EU-citizenship depends on institutional membership of a polity at the national level. Moreover, EU-citizens' political rights are limited within other national communities, such as the absence of voting rights in national elections. The institution of EU-citizenship is, therefore, both partial and nationally inflected. This European democratic bond of collectivity relies on partaking in a national *demos.* The partiality and national inflection of the democratic bond is also institutionalised in the direct election of the *European* Parliament. The role of the EP is limited in some areas compared to national arrangements, such as the lack of a right of initiative. Furthermore, the election of these representatives takes place in the national polities. Representatives in this 'supranational' institution are not elected in pan-European elections, rather national elections are held in accordance with national traditions. They are, for instance, held on different days using national electoral systems. As Richard Bellamy observes, the organisation of the EP follows a *demoicratic* logic of representation, not a democratic one (Bellamy 2013). These two democratic institutions, therefore, effectively institutionalise democratic bonds between national *demoi* rather than giving rise to equivalent relationships at the European level. The lack of a public sphere makes these institutional

relationships partial compared to their national counterparts, and inflects them along national lines.

For argument sake, I shall assume that supranational citizenship and representatives elected by a pan-European electorate are in place at the European level. Even if this were the case, which it is clearly not, the civic-democratic system at the European level remains partial and deeply nationally inflected, because the public spheres remain part of the national political orders. The public sphere is the crucial institution for democratic will-formation as it enables the key democratic processes of accountability and tracking the popular will in modern enlarged polities (e.g. Dewey 1954 [1927]; Fossum 2005; Habermas 1992b). Democratic will-formation remains organised within Europe's national polities. This observation is closely associated with the analysis of deep diversity, and more importantly, the lack of a European socio-cultural normative system. Important is that the European polity lacks the infrastructure to create the preconditions that enabled the emergence of even a transnational public sphere at the European level, as was the case, for instance, in the early modern American republic (Martin 2005). The lack of a common language is one important reason.[5] Unlike the success of economic and political integration, a transnational public sphere has yet to emerge at the European level (Bellamy 2013: 506). The supranational elite have, however, tried to forge a symbolic order, but to no or extremely limited avail (Bellamy 2013: 506; Middelaar 2009). The alleged transnational links between public spheres (Risse 2010) at best ensure similar topics of debate. The lack of a public sphere prevents the occurrence of democratic processes of will-formation at the European level. As a result, democratic will-formation by deliberative means in the European polity remains heavily inflected towards the nation. Individuals partake first and foremost in national civic-democratic orders, not only because citizens remain part of deliberative will-formation processes within their national polities, but also because these processes are complemented with nationally ensured rights and liberties, and elected representation in national parliaments. As such, individuals only fully share democratic procedural bonds at the national level. EU-citizenship and the democratisation of European institutions do create procedural relationships between citizens as part of their national *demoi*. I propose to refer to this

second 'European' bond of collectivity as the *demoicratic* bond, which creates peaceful means of conflict resolution through, for instance, compromise rather than the construction of a shared democratic will at the European level. I suggest, therefore, that bonds between individual citizens transform them into a *demos* at the national level and, in addition, form a *demoicratic* bond between these *peoples* at the European level.

In line with Sangiovanni's analysis (2008: 147), a political order results in the institutionalization of networks of relationships. As we saw in chapter six, the sovereign state played an important role in creating relationships between citizens. Europe's two-tier integrated political order does not only institutionalize mechanisms to manage interdependencies through technocratic and democratic means, it also gives rise to transnational relationships based upon shared interests and democratic procedures, which nonetheless do not destroy the deep diversity of the Union. This interpretation of the institutional bonds of collectivity resonates clearly with the *demoicratic* literature on the EU. These theorists agree that EU-citizens remain primarily part of people at the national level. As said, they argue that the *demoicratic* Union offers the political means to achieve common goals (Bellamy 2013) and/or should manage interdependencies between European countries (Nicolaïdis 2013: 351). My argument offers a further argument to perceive of the EU as *demoicracy* based upon a realist interpretation of the institutional bonds of collectivity at the European level. To clarify, interdependencies also exist between other countries. The US, Canada, and Mexico share certain commercial interests, and hence enacted North American Free Trade Agreement (NAFTA). The lack of political order prevents a realist case for a *demoicracy*, because these countries continue to keep their territorial 'hard shell' in place, at least at the institutional level. My interpretation of the commercial and *demoicratic* bonds between persistent national peoples offers, I believe, the most convincing interpretation of existing institutional relations. Other *demoicrats* could rely upon this realist interpretation of these relationships to further bolster their case.

Before moving on to the reconceptualization of popular sovereignty, some commentators might argue that this interpretation privileges certain facts over others. My response is, to some extent, to bite the bullet. Indeed,

this analysis does not incorporate every detail of the complexity of social reality. The task of interpretation requires some aggregation and generalisation from empirical reality because political practices are not necessarily coherent. The interpretation, however, hopefully offers a plausible and coherent account of the institutional relationships within the European polity as a whole. Any holistic interpretation should remain open to criticism to improve it (Bevir 1999), however, in line with Donald Davidson's principle of interpretive charity, an interpretation's success should be judged against its ability to offer a coherent and convincing account of reality (Sangiovanni 2008: fn 28). To make this claim, I compare my account to the three prominent alternatives in the debate: technocratic, federalist, and nationalist claims (e.g. Horeth 1999). Technocrats argue that EU-citizens share similar (economic) interests. The diverse national experiences of EU-rule however, as happened during the euro crisis, undermine this conception of the bonds of collectivity. The crisis illustrated the persistent heterogeneity of Europe's welfare economies exemplifying the peoples' divergent (economic) interests. Moreover, the technocrats do not address democratic relationships at the European level, which aim to prevent technocratic domination and the deficit of legitimacy. Democratic federalists propose that citizens share democratic values which ground procedures. This account is, on the one hand, too universalistic, because the United States of America, Australia, and other non-European democratic countries broadly share the same democratic values as expressed in EU-treaties. On the other hand, democratic institutions remain nationally organised, especially those associated with deliberative will-formation, and therefore reflect distinct national understandings of legitimate democratic rule. Finally, nationalists argue that the relevant bonds between citizens exist exclusively at the national level (and some even at the European level (Siedentop 2000)). Their case aligns most closely with my conception. But these nationalist conceptions offer no convincing account of institutional relationships at the European level. Most citizens express a belief in some European interests, such as economic cooperation and even defence *coordination* (Díez Medrano 2010; Thomassen and Schmitt 2004). I want to suggest, by comparison, that my two-tier conception of Europe's bonds of

collectivity meets Davidson's principle of charity better than these prominent counterparts.

In addition, this particular interpretation can lay the foundation for a conceptual structure able to govern legitimation stories of popular sovereignty that can make sense to citizens in contemporary Europe. Legitimation stories should make political reality intelligible. As argued, the willing suspension of disbelief requires practical resonance. The political fiction of the people therefore requires that an interpretation plausibly make sense of institutional relationships between citizens. European citizens are aware of their bonds with other peoples, but also their much stronger national communities of faith. The denial of this community of faith, as we saw in the previous chapter, can result in resentment. Yet, in the main, European citizens evaluate integration as a positive development (Bellamy 2006: 248). They now require a story of popular sovereignty which makes sense of the EU's legitimacy within this two-tier political order. The above interpretation of the institutional bonds offers a coherent account in which the national peoples remain the only source of authority within the European polity, thereby avoiding competing claims of different peoples as sources of authority, as encountered in other theories (Glencross 2012). Based upon this realist interpretation, I shall outline a conception of popular sovereignty to structure legitimation stories that can realistically guide political agents' appraisal of the Union.

IV - A *demoicratic* conception of popular sovereignty

In this section, I offer a novel conception of popular sovereignty, which could plausibly make sense of the EU's legitimacy. According to this alternative conceptual structure, multiple peoples as constituent powers create a two-tier political order -- the constituted power. As such it constitutes a significant departure from the contemporary concept of popular sovereignty. Power structures, as genealogists often observe, shaped the concept of popular sovereignty at the level of its conceptual structure. The historically shaped conception of popular sovereignty became closely wedded to *de facto* state sovereignty (and shaped by it). The contemporary unitary conceptual structure of this concept is of a single constituent power that authorizes a

single sovereign-constituted power. Popular sovereignty, I want to suggest, refers to the conceptual structure in which the bonds of collectivity should inform the appropriate criteria of legitimacy of the political regime (see also Sangiovanni 2008; White 2011). Taking this more abstract pre-interpretative conceptual structure as my point of departure, I propose a reconceptualisation of popular sovereignty in order to appraise the EU's legitimacy realistically. A detailed conception would not only take us too far afield, but would more importantly enter into a realm of detailed description at odds with Williams' realist political thought. A detailed description of the correct understanding is typical of an idealist enterprise, which Williams explicitly rejects for being unable to do justice to the disagreement inherent in 'the political'. As with any political concept, disagreement will exist on its proper conception (Williams 2005). My proposal is that a *demoicratic* conceptual restructuring of popular sovereignty could make sense of the EU's legitimacy. This conception can, furthermore, make sense of it based upon existing relationships within Europe's two-tier political order. In addition, first-order disagreements on the exact criteria of legitimacy remain possible, even were this structure to gain widespread support.

The core assumption which underlies this proposal is that popular sovereignty remains one of the few viable ideational resources with which to theorize political legitimacy in our historical circumstances. This claim requires elaboration because some authors have rejected both its validity and desirability (Balibar 2004a; Bohman 2004: 323; Papadopoulos and Tsianos 2007). James Bohman, for instance, suggests that non-domination should overcome popular sovereignty. His argument is that, the *demoi* should not dominate another in a polity, and therefore require deliberative structures at the transnational level (Bohman 2004; 2005). This argument seems reasonable. My claim is that his appeal to the *demoi* indicates a continued commitment to popular sovereignty. In contrast to Balibar, Bohman implies a novel *conception* of popular sovereignty, though his main focus is the application of the ideal principle of deliberation rather than the theorizing of *demoicracy*. The most important reason returns us to the central tenet in Williams' political thought; normative commitments arise from within their historical circumstances. In chapter two, I proposed a stylized, but historically

grounded account of how popular sovereignty arose, in an increasingly disenchanted political space, to replace the divine right of kings. This disenchanted cosmology was an essential aspect of modernity, and continues to frame (post)modern contemporary politics in Europe (e.g. Lassman 2014; Willke 2009). Furthermore, another consensus exists on legitimate politics in the European polity. Whatever its form, shape, or level, the European political order *has* to be democratic. Just as European empires relied upon Christianity, bereft of such metaphysical principles, modern democracies require a popular sovereign to ground authority (Bickerton 2011: 666-668). The people remain the most likely foundation of legitimate authority for a legitimate democratic European polity. These historical circumstances inform this attempt to reconceptualise popular sovereignty rather than to abandon it completely.

The *demoicratic* conception of popular sovereignty conceptually structures legitimation stories as those of multiple constituent powers that authorize a two-tier political order -- the constituent power. It might be helpful to explain this conception of popular sovereignty through the use of the thought experiment of a foundational moment (see also Cheneval 2007). This move constitutes a *Humean* thought experiment because it recognizes that force results in the construction of centers of power, and thus in institutional bonds between denizens.[6] Still it clarifies the crucial analytical point of the 'simultaneous creation' of the constituted power. Starting however at the level of the constituent power, individuals are first and foremost part of particular peoples. The latter, however, are not completely separate institutional entities, because they share institutional bonds between each other as collectives. So far I have offered a more abstracted account of the previous interpretation of institutional bonds. The next part describes the kind of political order -- the constituted power -- these peoples would construct in recognition of such bonds. Now following the classic logic of popular sovereignty, the people as constituent power create the constituted power. In this foundational moment, the peoples would *simultaneously* create two distinct decision-making centers within one political order. The peoples authorize both the national decision-maker and the transnational center. This two-tiered order reflects the *peoples'* bonds of collectivity. The first-tier should govern the particularities of national

peoples, whilst the second-tier should govern transnational bonds between polities peacefully. The peoples' decision-maker and the transnational one are part of the same political order, which itself is the product of the peoples' will. The essential point is that this order forms a single constituted power without either tier having authoritative superiority, or what some might call sovereignty (e.g. Malcolm 1991). The real 'casualty' of this conception of popular sovereignty is any decision-maker attempting to claim absolute sovereignty. As argued in the previous chapter, the political fiction of sovereignty has become highly implausible. Therefore, this 'conceptual' causality is actually a virtue for the conception's likelihood to act as a heuristic tool for political agents, as I address in more detail below.

This conception of popular sovereignty replaces the statist one, which to some extent has become subsumed. These centers are each other's normative equal as they are both part of the same constituted power created in this foundational moment. To clarify, in European circumstances, states are therefore considered to be *normatively* on par with the EU-regime. According to this conception, first-order disagreements on the political authority of either level should have to make sense in relation to one another, rather than trying to privilege one over another. Particular historical circumstances will decide the justificatory strength of particular claims to authority. Decision-makers' regimes are essentially normative equals within the *demoicratic* political order. The peoples in a *demoicracy* pursue their common interests peacefully through the second tier of the constituted power. The qualification of peace is necessary because, unlike mere intergovernmental regimes, the dependencies do not create zero-sum benefits. Meaningful disagreements can exist on shared interests and the way to pursue them. In addition, deep diversity results in the differentiated impact of homogeneous decisions, further complicating the pursuit of such interests through transnational rule. A democratic second tier aims to ensure the peaceful co-existence of these distinct peoples by channeling conflicts through common institutions. This emphasis on the peaceful pursuit of interdependencies and interests gives these people a democratic character. On this *demoicratic* conception of popular sovereignty, a plausible account of the will of the polity's popular sovereigns should inform the criteria of the transnational order's legitimacy.

The *demoicratic* conception, however, does limit the scope of the transnational power. The move from Union to concord would be illegitimate change in the organization of power, because the popular sovereigns want a *demoicratic* political order. This conception of popular sovereignty can therefore make sense of the regime's legitimacy within its historical circumstances at the normative level.

Having fleshed out my proposal for a *demoicratic* conception of popular sovereignty, I appraise this conception's ability to act as heuristic tool in making sense of the *EU's* legitimacy, because it offers a plausible political fiction to associate to popular sovereignty. This *demoicratic* conception of popular sovereignty relies on the political fiction of the people as beneficiaries, *demos*, and nation at the national level exclusively. This fiction continues to find practical resonance in the persistent, national-level institutionalization of the intertwined judicial-economic, civic-democratic, and socio-cultural systems. The conception can, consequently, continue to rely upon this three-fold fiction of the people. Most significantly, as said, this conception of popular sovereignty arguably, and somewhat paradoxically, jettisons the political fiction of sovereignty. The fiction is not rejected as a function of the peoples' right of authorization, but the conception implicitly jettisons the '*de facto*' sovereignty of the state or any other political order. The peoples would not authorize a sovereign political order because it would be unlikely to govern their transnational ties peacefully. As a result, this conception does not rely upon the aspects of the political fiction which are no longer present in Europe's two-tier political order. In recognition of certain interdependencies, these peoples no longer want a Hobbesian state order but a two-tier political order.[7] The EU governs their commercial and *demoicratic* interests: prosperity and peace. These interests can provide a justification for the peoples to come together. Recalcitrant states can, in addition, be condemned if they are unwilling to abide by common decisions. Thus, a member could not only leave the Union, it could also become excluded, based on this conception. Finally, *demoicratic* popular sovereignty fits the historical cosmology and commitments within the European polity. Majone's technocratic non-majoritarian democratic arrangements, for instance, have been identified as conceptually stretching democracy beyond recognition (Everson 2005).[8]

Contemporary citizens do not accept technocratic domination, hence it cannot offer a durable solution to the EU's democratic deficit. *Demoicratic* popular sovereignty can make sense of the EU's legitimacy in democratic terms. The delineation of appropriate criteria, however, should not resolve around what binds EU-citizens, but what binds European peoples. The transnational bonds of the pursuit of commercial interests, and the *demoicratic* interest in peaceful determination of those and other interests, can inform realistic legitimation stories for the Union.

To further flesh out the novelty of this conception of *demoicratic* popular sovereignty, I contrast this constituent power to other prominent sources of legitimacy for the EU in the *demoicratic* literature: (i) a (weak) European *demos,* (ii) individual citizens, and (iii) the states. To anticipate a source of objections to my proposal, the *demoicratic* conception of popular sovereignty is a *conceptual* structure for making sense of the EU's legitimacy in a two-tier order, at the conceptual level. In the following, I quite often reject *conceptual* suggestions from other *demoicrats* as ways to make sense of the appropriate criteria of legitimacy. As will nonetheless become apparent in the next section, I embrace most of their proposals to generate legitimacy at the institutional level. This initial clarification can (hopefully) prevent some possible confusion in the following discussion. Starting with a European *demos*, some theorists argue that the people can provide legitimacy. In his defence of popular sovereignty in the Europe polity, Andrew Glencross convincingly argues that a democratic economy of representative claims could constitute a democratic legitimation procedure. Decision-makers can appeal to a European people in addition to national peoples. Democratic norms of accountability and transparency should govern this competition of claims. The ambiguity on the popular sovereign in the European polity thus offers a constructive source of democratic legitimacy (Glencross 2012). One important issue is the implausibility of a European *demos.* The core issue is that claims to even a weak *demos* thesis find grounding neither in citizens' beliefs, nor in any institutions. Such a legitimation story might be desirable, but it lacks any practical resonance to govern citizens' behaviour. It therefore makes no realistic sense of citizens' position in the European political order. The demands on citizens' willing suspension of disbelief are too high in the current

circumstances of deep diversity. At the normative level, this proposal is incompatible with *demoicratic* popular sovereignty because the latter refutes the existence of a European *demos*. The legitimacy of the transnational order should not derive from appeals to an overarching people. The appropriate criteria of legitimacy should derive from the bonds between peoples. In the European context, these claims find resonance in the commercial and *demoicratic* bond. Yet appeals to a European people lack a similar practical resonance which can provide a similar degree of plausibility, hence it is a problematic source to theorise EU legitimacy from a realist perspective.

Secondly, the individual citizens of the Union have been identified as a possible source of legitimacy for the EU-regime. The legitimacy of the Union should derive, in part, from its normative recognition of citizens as legitimate transnational agents with inalienable rights and liberties. Cheneval, for instance, argues that principles of legitimacy should derive from an original position behind the veil of ignore, with both representatives of the peoples and citizens determining principles of legitimacy (Cheneval 2008). In a similar vein, Nicolaïdis argues that legitimate EU-rule should recognise and protect individual citizens' rights to mobilise at the European level (Nicolaïdis 2013). At a strictly ontological level, individual citizens are arguably the most creditable source of legitimacy for any political order. Williams' argument on human rights tends to rely on individuals being the raw material of politics (Williams 2005: 62-74). The normative position of citizens has been recognised in multiple international treaties, declarations of human rights, and national bill of rights. Political reality, however, is not merely a product of facts, fictions also govern the behaviour of individuals in the political realm. In the European context, the recognition of citizens results indirectly in the assumption of a European *demos*. The reason is that citizens are placed in direct relationship to the EU-regime. This claim, however, does not plausibly make sense at an institutional level because it does not take seriously the transnational character of the bonds. Alternatively, it results in an incoherent account in which citizens as individuals compete with themselves, but then, as part of a collective peoples, act as the source of authority within the polity. In attempts to make sense of the EU's legitimacy at the transnational level, individual citizens should not have an authoritative position in the political

order. The *demoicratic* conception of popular sovereignty, therefore, does not recognise individual citizens as a source from which to theorise principles of legitimacy for the transnational order. That being said, this conceptual conclusion does not necessarily result in a rejection of EU-citizens as politically significant at the transitional level. But their significance derives these from the transnational European bonds of collectivity. Commercial interests, for instance, might warrant the freedom of movement and transnational property rights. Furthermore, their enforcement might result in the creation of transnational rights within national judicial orders. Citizens would thus gain the status of right-bearers within the overarching order. The transnational recognition of the individual follows from a conceptual argument on transnational bonds, rather than on the direct status of the individual in the order. Conceptually, individual citizens should not delineate appropriate criteria of legitimacy for the second tier of the political order.

Thirdly and finally to clarify why my proposal does not collapse into intergovernmentalism, I shall distinguish peoples from the states. States are a prominent candidate to legitimate the 'EU as a *demoicracy*'. Richard Bellamy emphasises that, as part of the solution, an *ethos* of non-domination should govern supranational negotiations between the state representatives (Bellamy 2013; Bellamy and Weale 2015). This non-ideal proposal clearly has *institutional* merits. My *demoicratic* conception of popular sovereignty, however, departs company from this position in two ways at the *conceptual* level. Firstly, it denies any normative superiority of the state, because these constituted powers are as much a product of the peoples' normative authority as is the transnational part of the constituted power. The *demoicratic* conception would function as a more plausible alternative to this conceptual structure. The European peoples' wills authorize a transnational regime to govern interests and dependencies rather than merely achieving zero-sum benefits (see also Lord 2011). Secondly, Bellamy continues to rely on the people's sovereignty in a more empirical sense. State representatives are therefore deemed to be authoritative agents. This indirect legitimation by state-representatives suggests an embellished form of intergovernmentalism rather taking seriously the integrated nature of the EU-system of multi-level governance. The *demoicratic* conception explicitly rejects the political fiction of

state sovereignty within its conceptual structure. The peoples are the popular sovereign, however they do not engage in a process of delegation via the states *pace* Bellamy, but in a process of co-creation. To clarify again, as with individual citizens, this conceptual structure does not deny either the states' role or that of its representatives in initial integration processes, or in the institutions for shaping second order legislation, and even possibly in constitutional processes. States, however, are not a source of legitimacy for the Union at the conceptual level. Their authoritative position derives from them being the representatives of the deep diversity between peoples, rather than because they are the bearers of sovereignty in the 'anarchic' realm of international politics. Legitimation stories should, therefore, follow a different conceptual structure when making sense of the EU's legitimacy. The conceptual structure departs company from applied accounts of institutional legitimacy. Moving from the conceptual structure to institutional proposals, this structure can guide political agents in making sense of EU legitimacy. The *demoicratic* conception of popular sovereignty can contribute to overcoming the EU's democratic deficit by making sense of the democratic legitimacy of the EU-level, following this markedly different logic.

V - From democratic deficit to *demoicratic* legitimacy

The theorem at the heart of this thesis, as with many other contributions to the normative literature on the EU, has been the 'democratic deficit'. In this final section, I shall return to this real world challenge. The prominent legitimation stories, as reflected in the academic debate, propose three criteria of legitimacy as appropriate for the Union. The genealogical enterprise reconstructed the three distinct conceptions of popular sovereignty which underpin these criteria. Historically, they came together to make sense of the hard shell of the modern sovereign state. Within Europe, each state's historical circumstances would result in distinct constellations of these criteria and understandings thereof. This statist conception does not make sense of citizens' -- the ruled -- (and for that matter, decision-makers' -- the rulers) place in the transformed European polity in any of these particular national interpretations. The contemporary conception of popular sovereignty,

however, remains the frame for first-order disagreements. Janie Pélabay, Justine Lacroix *et al*. (2010) offer convincing evidence that this is even the case in public discourses contributed by elites (see also Beetz 2015), and evidence suggests a similar understanding among the broader European public (Díez Medrano 2010). It cannot guide appraisals of the EU's legitimacy -- democratic or otherwise. In line with the aim of Williams' realist project (e.g. Hall Forthcoming), I suggest that the *demoicratic* conception of popular sovereignty, grounded in existing *institutional* bonds of collectivity, can provide a realistic conception with which to guide political practices of making sense of the EU's legitimacy. This conception, however, need not lose its critical potential due to its plausibility. In the following reflection, I argue that the *demoicratic* conception can theorise a move beyond the democratic deficit by focussing upon democratic representation at the EU level. In line with most modern democratic analyses, representation remains the institutional mechanism through which to generate democratic legitimacy in enlarged polities. I will not, however, address its exact relationship to the national level because such arguments are part of the political debate. The aim of this section is to illustrate that *demoicratic* popular sovereignty creates a cogent perspective on the *EU's* democratic legitimacy. A *demoicratic* conception can make sense of these structures as legitimating the EU. The argument illustrates that, unlike the statist conceptual structure, this *demoicratic* one can govern political agents' ability to make sense of the EU's legitimacy without requiring an extensive reconfiguration of power, and without digressing into a dogmatic defence of the *status quo*. This political conception could, as a result, realistically contribute to overcoming the EU's democratic deficit.

The analysis starts with Europe's most prominent democratic institutions, the EP and the Councils, both of which can be made sense of as representative vessels of the *demoi's* will. The EP can plausibly act as a source of *demoicratic* legitimacy, because citizens elect their representatives through nationally organised elections. This democratic chamber enables peoples' national representatives to discuss their shared commercial interests and peacefully come to make decisions. The European commercial interest can justify the subsequent organisation of the peoples into party-*federations*, because the *demoi* have some overlapping ideals concerning the course of

the Union. As Richard Bellamy (2013: 510) also observes, the EP can thus act as a source of *demoicratic* legitimacy for the EU. In addition, the Council or rather Councils of the Union consists of the ministers of a particular policy area.[9] State representatives make decisions in order to pursue shared interests through Europe's network of infranational bureaucracies. Most decisions have to adhere to the recently introduced double qualified majority decision-making procedure (which requires the consensus of a majority of countries and of the EU's overall population). This rule generates *demoicratic* legitimacy by balancing the effectiveness of transnational interests at the European level with sufficient respect for particularity at the national one. In the Councils, state-representatives can also function as representatives of the European *demoi* in decision-making processes. Made sense of as such, these statist agents could generate *demoicratic* legitimacy. Finally, from a separation of powers perspective, the simultaneous presence of the EP and the intergovernmental Councils in the decision-making procedure generates *demoicratic* legitimacy within a democratic system of representation. The EP represents national positions on the transnational bonds, whilst Council represents deep diversity within the polity. The *demoicratic* conception of popular sovereignty can thus make sense of these two core institutions as offering democratic legitimacy to the European tier of governance.

The third prominent governmental institution of the Union is the Commission. It is often dismissed as a bureaucratic institution which, therefore, fails to generate democratic legitimacy of any kind, but such an interpretation does not fully reflect the institutional reality. Firstly, the Commission consists of indirect representatives of the member states. The heads of state and government recommend them for their competence. To some extent, this places them on par with the average cabinet of ministers in many of Europe's national arrangements, rather than merely being conceived as elite civil servants. And unlike the spoils systems of democratic appointment, the collective transnational parliament has to explicitly approve appointments. Similar arrangements exist in national polities, whether implicitly (the Netherlands) or explicitly by vote of confidence (Germany). Yet (coalition) governments are often supported by parliamentarian majorities, hence this expression of trust is somewhat a rubber stamp rather than a

meaningful transferral of democratic legitimation. The lack of direct relationship between, on the one hand, the Commission and the Council of the European Union and, on the other hand, the EP makes this procedure more of a meaningful act of recognition than what occurs in most European polities. The national *demoi* legitimate these governors to pursue commercial interests and manage other interdependencies peacefully. Some might object however that the Lisbon treaty determines that Commissioners should "promote the general interest of the Union" rather than their national interests (Council 2010: article 17). This treaty article seems to invoke a federal statist interpretation of the representative function of the commission. A completely technocratic body, isolated from external political influence, *pace* technocratic ideals, would be highly undesirable. In attaining democratic legitimacy, The ministerial appointment interpretation therefore accords particularly well with the commercial bond of European peoples. The Commission should govern with some degree of autonomy so as to remain effective in international negotiations and relatively impartial in the application of decisions within the Union. Still, it remains part of a system of checks and balances performed by the Councils and the EP at the European level. A *demoicratic* conception of popular sovereignty can thus also make sense of the Commission as a source of democratic legitimacy for the EU.

The *demoicratic* conception of popular sovereignty offers a largely positive interpretation of the EU's legitimacy. Up to this point, the *demoicratic* conception did not propose any institutional changes, but it did provide a more constructive frame through which to make the EU-regime intelligible as a political order, and to make sense of its legitimacy within its historical circumstances. Yet this might make it seem a mere defence of the *status quo*, simply utilising a different conceptual story. *Demoicratic* popular sovereignty, however, also generates a critical perspective on the current institutional organisation. European political integration is, at present, a process which is governed by the masters of the treaties: the heads of state and government in the Council of the European Union. This intergovernmental institution decides on both the direction and institutional regime of the Union. From a *demoicratic* perspective, their lack of direct democratic credentials is problematic because the rulers of the peoples decide upon the creation of new rulers for the

subjects. In this regard, Jonathan White forcefully argues that many European measures have not been the product of democratic procedures, but rather the exercise of *unchecked* decisions by a European elite (both intergovernmental and supranational). He concludes that the lack of a clear popular sovereign contributes to the perpetuation of emergency politics (White 2015). From a *demoicratic* perspective, the question becomes how to include the *demoi* in the constitutional process of European integration? In line with other *demoicrats*, this *demoicratic* conception of popular sovereignty points toward a greater role for national parliaments in transnational decision-making. This institution is *demoicratic* because, firstly, it remains firmly grounded in the national polity, unlike the EP and Commission. Secondly, it reflects the plurality of the *demoi* to a much greater degree than state representatives do. The emphasis on the role of national parliaments has been a topic in both political and academic debates on the democratic deficit (e.g. Auel 2007; Cooper 2005; Glencross 2014). The yellow card procedure has been the institutional result of these debates. This innovation institutionalises the principle of subsidiarity in the Union, which Ian Cooper describes as the virtual third chamber of the Union (Cooper 2005). This virtual chamber generates further *demoicratic* legitimacy for the EU because it means direct representation of the European peoples. National parliaments gain influence on the second order process, which indirectly influences the unwritten *Kompetenzen Katalog* of the Union (that is the division of powers among levels of governments in a Union or federation). This institution is certainly a *demoicratic* improvement, even if it is the result of intergovernmental pro-European politicians attempting to overcome the democratic deficit (Beetz 2015). Despite being a *demoicratic* improvement, this *ex-post* accountability function does not offer the degree of ownership implied by the *demoicratic* conception of popular sovereignty.

A *demoicratic* conception of popular sovereignty strongly suggests a *demoi* with a pronounced institutional role in the formation of the Treaties governing the EU. A constitutional process in which citizens participate as equals in the creation of common principles is an elusive prospect in modernity's enlarged polities. The modern model of representative government nonetheless suggests that representatives could partake in the

name of associational interests (Kalyvas 2005). In Europe's national polities, constitutions can change through multiple majorities of the representatives of the *demos*; the parliament or parliaments. The government cannot change the constitution without multiple, often qualified, parliamentary majorities and/or referenda. In the European context, a more *demoicratic* solution would institutionalise a (non-virtual) parliament of national parliaments to draft proposals for treaties. The Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) would be well suited for this role. This conference is a better representation of Europe's peoples than the governments. Yet it has no constitutional role in the formation of the treaties. This proposal finds resonance among other *demoicrats* (Bellamy 2013: 509; Neyer 2014). The national parliaments are a more suitable source of democratic legitimacy than the heads of state of governments in a *demoicracy* because the former better represent the diversity present in Europe's particularistic polities. To make a historical comparison, American states did not send a single representative to Philadelphia, where, by comparison those were rather elitist affairs with a limited degree of internal pluralism within the states (Rossi 2010a: 37-38). Returning to the European context, integrating a greater number of checks and balances in this constitutional process, compared to national equivalents, would further do justice to the thinness of the bonds of collectivity between the peoples. Treaties might, as a consequence, require acceptance by the Council of the European Union, popular ratification through referenda, or maybe both. On the referenda, these should remain organised along national lines which remain compatible with the *demoicratic* vision. In both cases, this influence should probably remain an *ex-post* veto. The primary responsibility of drafting however should lie with (the true representatives of) the constituent power of Europe's *demoicracy*: the national parliaments in their collectivity. The inclusion of national parliaments should transfer greater democratic legitimacy because the peoples' will would become more prominently reflected in the second tier of their political order. Furthermore, the institutionalisation of a constitutional procedure could contribute to preventing further integration through rather authoritarian emergency politics. One particular episode of this

kind of politics has been broadly discussed already and often mentioned in this thesis, namely, the 2008 financial crisis and its aftermath.

The final reflection analyses the central institutions of the Economic and Monetary Union (EMU) in the context of the euro crisis. Many *demoicrats* express critical views on the EMU.[10] The *demoicratic* conception of popular sovereignty results in a similar critique of its legitimacy. Lacking clear consensus about the *finalité politique*, many European institutions were primarily designed in pursuit of particular policy goals (Bartolini 2005: 194-199). One of the most ambitious and recently most controversial policies has been the creation of a monetary union. The 2008 global financial and related economic crisis, however, had severe consequences for the democracies of the Union. The responses to the series of intermediate and severe crises have been eclectic to some extent. Nevertheless, a pattern toward executive federalism has been identified (Crum 2013: 621-623). To quote Ben Crum at length,

> This tendency is aptly called 'federal' to the extent that it involves the deepening of common frameworks for financial and economic policy-making and the strengthening of European surveillance. Typically, even if central policy co-ordination is reinforced, much of that co-ordination allows for a certain level of diversity, and actually acknowledges it to be ineradicable. … At the same time, the tendency is clearly towards a form of *executive*-dominated federalism. The overall policy frameworks and the surveillance procedures remain under control of the national governments. This has three important implications. First, it means that these processes operate beyond effective parliamentary scrutiny. […] The second implication of the key role of executives is that this mode of decision-making basically evolves according to the logic of international power rather than that it is subject to procedural principle. […] The third implication of the continued primacy of national governments in EMU is the prominent role attained by objectified guidelines and technocratic procedures in the governing process. As the national governments cannot themselves execute the actual supervision of each other's financial and economic policies, they delegate these tasks to technocratic authorities – most notably the European Commission and the ECB (Crum 2013: 621-622).[11]

This pattern arguably constitutes a continuation of earlier less democratic patterns of integration (e.g. Bartolini 2005; White 2015).

Leaving aside empirical considerations for immediate responses to the specific crisis, the internal unification of monetary policy transgresses the boundaries of the *demoicratic* conception of popular sovereignty by imposing a process of unification rather than coordination. As Ben Crum concludes, "Ultimately, the tendency towards executive federalism can be expected to lead to states being bound to ever more detailed policy contracts that hollow out their political autonomy in financial and economic matters" (Crum 2013: 623). The automatic penalties for national authorities with 'indefensible' budget deficits in the Stability and Growth Pact has been characterised as a 'straitjacket' between mistrusting member states, rather than being conceived as a macroeconomic policy to further common economic interests (Bartolini 2005: 198). The design of the ECB further exemplifies the problematic nature of this tendency from a *demoicratic* perspective on popular sovereignty. It can best characterized as 'technocratic' and 'federal'. The ECB's autonomy is unprecedented, even compared to pre-existing national arrangements (Bartolini 2005: 196; see also Streeck 2014). This design aimed to ensure insulation from direct political control and, more importantly, popular pressures. Furthermore, its autonomous decisions are directly applicable to the entire Eurozone, its 'federal' decisions therefore govern across an economically heterogeneous polity. The ECB, as part of the troika, can directly intervene in national democracies (Bellamy and Castiglione 2013: 217). This institutional structure, designed to pursue of a common monetary policy, conflicts with the *demoicratic* conception of popular sovereignty. The euro crisis illustrates the impact of the peoples of the Union and the lack of democratic popular accountability of these monetary institutions to them. This supranational institution has competences to govern without consideration for particularity across the European polity but it does so without being held to account to the representatives peoples in their plurality: the national parliaments. It no longer represents a transnational commercial bond between sovereign *demoi*, but is now a centralised hierarchical institution in a transnational polity. The logic of such an institution is the presumption of a

single people. Moreover, it is a technocratic rather than a democratic institution due to the lack of democratic representation in them. For these reasons, it does not generate any *demoicratic* legitimacy.

The *demoicratic* conception of popular sovereignty cannot make sense of the EMU-regime's legitimacy in its current executive federal form. My interpretation of the transnational bonds recognises that commercial relationships justify transnational governance. The deep diversity in the polity warrants recognition within decision-making procedures. The national *demoi* thus have an interest in external unity, but they nevertheless require internal flexibility (see also Nicolaïdis 2013: 359). Crum's analysis indicates that implementation often uses flexible implementation through national bureaucracies. Still, some centralised decisions cannot be accommodated within Europe's polity characterised by deep diversity. Maybe Ben Crum's hope for democratic innovation proves right (Crum 2013: 625-628). The historical track record, however, and lack of constitutional structures to keep elites' emergency powers in check suggest a more pessimistic picture about this prospect. The lack of democratic legitimacy in this powerful and autonomous set of executive institutions is deeply problematic. Leaving aside feasibility, if deemed necessary for the Union's commercial interests, their democratisation would require a substantial amount of institutional alteration to align with a *demoicratic* conception of popular sovereignty. It alternatively remains a constant source of democratic delegitimation and popular resentment, which, at least according to Crum, could become the source of (legitimate) democratic resistance to the European integration (Crum 2013: 630). From this perspective, therefore, the *demoicratic* conception of popular sovereignty cannot accommodate every kind of political institution. As the above analysis shows, this conception of popular sovereignty challenges the *status quo*, whilst offering a more plausible heuristic tool for political agents

Finally, this conceptual structure nonetheless remains open to accommodating disagreements on relevant conceptions, even at a more normative level. Many republican *demoicrats* lament the enforced internal conditionality. One problem is that the logic of the international domain, namely power, takes over from the democratic procedural equality between intergovernmental agents (Crum 2013). Strong member states enforce their

will upon weaker ones. In the case of the Eurozone crisis, the wealthy Northern countries enforce their logic of austerity upon the Southern countries, broadly speaking (Streeck 2014). Bellamy's more state-oriented proposals reject this state of affairs by basing himself on an *ethos* of non-domination (e.g. Bellamy 2013; Bellamy and Castiglione 2013; Bellamy and Weale 2015). Alternatively, Nicolaïdis appeals to mutual transnational recognition (e.g. Nicolaïdis 2013; Nicolaïdis and Young 2014; Pélabay, Lacroix et al. 2010), which is arguably an equally attractive alternative, or a complementary, albeit more demanding *ethos*. Yet a liberal *ethos* of tolerance could also govern transnational relations, and be less demanding in comparison to republican non-domination or the Hegelian ideal of recognition. This openness is a merit from a realist perspective. To return to Williams, a *political* value should be able to sustain a political order whilst enabling the expression social disagreement. The *demoicratic* conception of popular sovereignty enables disagreement on a myriad of issues. How to define our commercial interests? How European should states behave toward another? How many checks and balances are necessary at the European level? And what competences should remain organised nationally? These issues constitute important political issues that I have purposefully left open in this account. In a *demoicratic* polity, citizens (through their representatives) should decide on such issues. My realist project attempted to show reasons for the unfruitfulness of the conceptual structure of the current debate. In this final chapter, I proposed a conception of *demoicratic* popular sovereignty based on already institutionalised European bonds of collectivity that could govern these first-order debates on the democratic deficit in a more fruitful manner. This hopefully demonstrated that Williams' political realist thought offers an insightful and constructive lens through which to make sense of the EU's democratic deficit.

VI - Conclusion: Realistic hope for a democratic future

The first quote of the epigraph is from an encounter between representatives of a Tsimshian tribe and those of the U.S. government. The former asked the latter: "If this is your land, where are your stories?" The indigenous tribe

challenged the Western colonizers by effectively asking for their legitimation stories. European integration has resulted in a similar dynamic. Europe's democratic *homo nationalis* do not necessarily dismiss European integration out of hand. A majority believe that the European project is a positive development (Bellamy 2006: 248), citizens express sincere concerns about the EU's democratic legitimacy. This thesis' philosophical inquiry into the contemporary conception popular sovereignty which governs this debate goes some way to illuminating this tension between an acceptance of European integration as a desirable development, and an inability to make sense of the EU's democratic credentials. Reliance on the multi-faceted conception of popular sovereignty results in an inability to make sense of the EU's legitimacy. The realist perspective clearly draws out the importance of the practical resonance of political fictions and their desirability in intelligibly making sense of a legitimate political order. A realistic legitimation story, therefore, takes seriously the historical circumstances in which a concept did and should operate (Hall Forthcoming; Sangiovanni 2008; Williams 2005). The pessimism associated with political realism (Hall Forthcoming: 3-4) does not imply the dismissal of hope in favour of fear. Realistic hope does not result in curtailing all hope for political change all together, rather it limits the distance between 'is' and 'ought' (Sleat 2013). Hope requires a degree of realism to temper disappointment and the subsequent resentment of politics (Sleat 2013). From this perspective, the messianic visions of re-establishing sovereignty in Europe (Nicolaïdis 2013; Weiler 2012) are not merely utopian within Europe's current balance of power, but dystopian sources of resentment. *Demoicractic* popular sovereignty fosters a realistic hope for the attainment of a legitimate democratic politics in Europe because it takes into account historical circumstances. Instead of an unlikely and hence unstable equilibrium, a *demoicratic* conception of popular sovereignty can govern plausible legitimation stories toward a shared democratic future. Practical political realities, such as the competition for power and the grip statist sovereignty exerts on the political imagination, might hinder this *demoicratic* vision and make it seem an unrealistic prospect. Yet political realism is not about dogmatically defending the *status quo*. Hope has its place in this tradition. Political imaginations change, and thus, so can the political *status*

quo. On that note, with in mind the EU's persistent legitimacy crisis, I want to invoke the second saying in the epigraph: "Those who lose their Dreaming are lost."

Endnotes

[1] Quoted in (Bobbitt 2002: 715).

[2] Some discussion can exist on Immanuel Kant's position in these matters, though this would take us too far afield. In short, a disjunction seems to exist between Kant's theoretical republican argument and practical politics favouring enlightened monarchs.

[3] See also (Cheneval 2007).

[4] Multiculturalism has arguably made this true for all Western European polities to greater or lesser extent (see Bohman 2003).

[5] The pre-existing memories against which European peoples make sense of the Union also limits the emergence of a meaningful public sphere (Lacroix and Nicolaïdis 2010b). This lack might be a matter of time (Malcolm 1991). This, however, would take us into the realm of peoples' beliefs rather than the institutionalisation of relationships between EU-citizens.

[6] In the European case, Bellamy points toward intergovernmental agreements as the empirical source of European integration which cumulated in the emergence of the EU (Bellamy 2013: 504). Others propose a less quaint narrative of continuous usage of emergency powers (Crum 2013; White 2015). The current EU-regime is clearly the product of legal intergovernmental, and some supranational, force.

[7] Francis Cheneval offers a Hobbessian account of these interdependencies which results in a multilateral order in contemporary circumstances (Cheneval 2007). See, for a contrary argument, Glyn Morgan's Hobbesian justification for a European superstate (Morgan 2005a; 2005b).

[8] On a side note, the democratic credentials of these non-majoritarian governance practices are also unfavourably appraised within national arrangements (Klijn and Skelcher 2007).

[9] The Council of the European Union and the Council for Common Foreign and Security Policy are exceptions to the norm because they include supranational representatives. This European representative might, however, strengthen these Councils' *demoicratic* legitimacy, because they combine individuals, who represent overarching commercial interests and the democratic interest in peace, as well as representatives of the constituent powers.

[10] Taking a republican intergovernmental perspective, Richard Bellamy comes to the conclusion that the monetary union resulted in normatively undesirable consequences (Bellamy 2013). In a similar vein, Kalypso Nicolaïdis observes that the financial crisis has strengthened perception of a crisis of *demoicracy* in Europe (Nicolaïdis 2013: 351).

[11] To improve readability, references to other texts have been edited out.

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